ADVERTISEMENT.

THE following REFLECTIONS contain a brief Hiſtory of the Conduct of the American Colonies, from their Firſt Settlement to the late Diſſolution of their ſeveral Governments. The Author, in committing them to paper, had two objects in view. He hoped that the power of Great Britain, which he knew was abundantly ſufficient if wiſely directed, would have ſoon reduced the Rebellion. In that caſe, the old Colonial Governments being entirely diſſolved, he conceived that new ones muſt be eſtabliſhed. To unfold the defects of the former ſyſtems—to trace their incongruity and repugnancy to the principles and nature of the Government to which they ought to have been made ſubordinate, and to prove that thoſe defects were the true cauſes of the revolt, he thought, might contribute to a more permanent union between the Two Countries; becauſe it would

enable the Politicians who ſhould be concerned in forming it, to avoid thoſe defects, and to found it on more rational and ſolid principles. Beſides, he conſidered, ſhould not that fortunate event take place, thoſe Reflections might be of importance to mankind; and, in particular, to thoſe Hiſtorians who may hereafter undertake to unfold the latent principles which have gradually and imperceptibly produced an event that has terminated in the Diſmemberment of a great Empire, if not in its final Ruin.

CONTENTS.

POLITICAL REFLECTIONS ON THE ROYAL, PROPRIETARY, AND CHARTER GOVERNMENTS OF THE AMERICAN COLONIES, &c.

CHAP. I.

On the general Principles of Government.

AS I intend to treat of the nature of inferior and ſubordinate ſocieties, and of the laws by which they ought to be conſtituted, pointing out, at the ſame time, the advantages or miſchiefs which muſt enſue from a ſtrict adherence to, or a deviation from, thoſe laws; it will be neceſſary, in order to take up the ſubject from its proper foundation, to ſay ſomething on Government in general, the great principle by which the union of every ſociety is formed and preſerved.

Civil ſociety is a political ſyſtem, formed by the union of individuals, who, putting their ſeveral powers under one ſovereign direction for their better ſecurity, agree to yield obedience to it. In order to form this politic body, certain fundamental laws muſt be eſtabliſhed, and proper perſons appointed to ſuperintend the execution of them, and empowered to compel the obedience of every individual.

The various forms of Government are either ſimple or mixed. The firſt are eſtabliſhed on principles peculiar to themſelves; and being different from each other, are conſtituted by different modifications of the principles of civil ſociety, and the variant conſtructions of the legiſlative and executive powers, from whence they aſſume the monarchical, ariſtocratical, or democratical characters. The latter are produced by an aſſemblage of the principles of the former.

All Governments, of whatever form, are founded on the following general laws, which are eſſential to their exiſtence, and without which

which there could be no ſuch thing as civil ſociety.

1. That there muſt be ſome ſupreme will, or legiſlative authority, competent to the regulation and final deciſion of every matter ſuſceptible of human direction, which relates to the ſafety and happineſs of the ſociety.

2. That every member and part of the ſociety, whether corporate, official, or individual, muſt be ſubordinate and ſubject to this ſupreme will and direction.

3. That there muſt alſo be a ſupreme executive power, to ſuperintend and enforce the adminiſtration and execution of the laws.

But beſides theſe general principles, which are eſſential to all Governments, of whatever form or conſtruction, there are certain laws and eſtabliſhments which are peculiar to each particular form, on which its conſtitution and eſſence depend, and which are as inconſiſtent with thoſe of a different form, as the rules peculiarly neceſſary in building a

houſe are with thoſe in building a ſhip. When, therefore, it is determined to eſtabliſh one particular form of Government, whether it be monarchical, ariſtocratical, democratical, or mixed, care muſt be taken, in forming it, that ſuch materials, and ſuch order of conſtruction, are not uſed, as are adapted to a different form, and which muſt defeat the intention. A monarchical, ariſtocratical, or mixed ſcheme of Government, formed on democratical principles, would be a groſs political abſurdity; and the terms can prove no more, than that what was intended for a monarchy, an ariſtocracy, or a mixed government, turns out to be a democracy.

In every production, either of divine or human invention, to be found among the works of nature or of art, whether in the rational, animal, vegetable, or inanimate world, there is a ſyſtematical combination and arrangement of principles and parts, which determine its ſpecies, conſtitute its nature, and preſerve its identity. Should this order be violated in the productions of nature, could we ſuppoſe the properties and principles of things to be ſhifting and ſhifted from one to

another, without reference or regard to their original intention; what a confuſion of qualities! what monſtrous and uſeleſs productions, would be the conſequence! and how ſhort the duration of the ſyſtem, where ſuch confuſion exiſts! In like manner, if, in works of human conſtruction, we ſhould join the diſtinguiſhing principles and parts of one ſyſtem to another of a different claſs, without regard to its propriety or end, it would be as abſurd and ridiculous as Horace's image, *Humano capiti*, &c.

This is as true with regard to the different forms and conſtitutions of Government, as in any other inſtance. The genius and character, the fundamental laws and principles, of that particular form we mean to eſtabliſh, muſt always be regarded in the conſtruction; and if we mean to preſerve it, care muſt be taken that no heterogeneous ingredients or principles be admitted, becauſe they muſt tend to change its nature, and in the end to deſtroy it.

But, although the fundamental laws of the three ſimple forms of Government are eſſentially different in their own natures, and can-

not, with any degree of propriety, belong to each other, and if introduced muſt weaken, and in the end deſtroy them; yet experience has proved, that the fundamental principles of theſe different forms may be brought to a friendly co-operation for the public good. They may be ſo combined and tempered, as it were, into one ſyſtem, as to form a counterpoiſe to each other, and a remedy againſt the miſchiefs which are naturally produced by each ſyſtem in its ſeparate ſtate. Such a ſyſtem has been eſtabliſhed by the wiſdom of our anceſtors. An enquiry into its excellence has led authors, both foreign and domeſtic, to celebrate its conſtitution, as the beſt adapted to maintain the reaſonable liberty of man to the longeſt period of exiſtence; and our own experience of its happy effects has led every Engliſhman to admire it, and wiſh for its continuance, always excepting thoſe who prefer their own private views to the happineſs of the public, and who expect to find their account in changes and revolutions.

Taking it therefore for granted, that we mean to ſupport and preſerve that excellent ſyſtem of Government which has been eſta-

bliſhed by the experience and wiſdom of our anceſtors, and maintained at the expence of much blood and treaſure, it follows, that we ſhould carefully avoid every thing that has a tendency to weaken and deſtroy it. The political, like the natural body, is liable to diſſolution, either by external violence or internal decay and diſeaſe. Its exiſtence may be prolonged or ſhortened, by the means which ſhall be uſed by reaſon or folly to preſerve or deſtroy it.

The health, vigour, and duration of every ſyſtem, depend on a ſtrict attention and adherence to thoſe original laws and principles by which it was formed. Every deviation from them, every change in the ſtructure of its parts and members, every introduction of heterogeneous matter, muſt produce diſorder and confuſion.

Thus in the political ſyſtem, whatever be its form, whether monarchical, ariſtocratical, democratical, or mixed, by the admiſſion of laws, inferior politic bodies, public boards or offices, eſtabliſhed on principles diſſimilar and repugnant to the eſſential and funda-

mental laws of the State, and to the nature and genius of the ſociety, that original polity upon which it was founded, muſt, in the nature of things, become changed and corrupt. The principles of each different form will find their advocates. Some men will adhere to one form, others to another. Different and oppoſite opinions, attachments, and averſions, will become fixed. Factions, and a perpetual competition for power, will ſucceed; which cannot fail in the end to deſtroy the unity and harmony of the ſociety.

We have ſeen, more than once, the excellent ſtructure of the Engliſh conſtitution nearly overturned by the too great prevalence of theſe different principles. At ſome times, the ariſtocratic and democratic influence has been nearly loſt under the too great weight of the monarchic; at others, the monarchic and democratic have been nearly ſwallowed up by the ariſtocratic; and at another, the monarchic and ariſtocratic have been totally deſtroyed by the democratic.

Men educated under one form of government can rarely, if ever, be reconciled to the manners,

manners, laws, and principles of another. It is education alone which forms and fixes human habits, manners, attachments, and averſions. This is as true in public as in private life, in politics as in religion. Train up a child in a particular mode of faith, and he will diſlike and reject all others. So men, educated in the principles of one form of government, will ever eſteem and prefer it, becauſe it is from that they have derived their ſafety and happineſs: and not knowing the bleſſings which others afford, they believe that thoſe they poſſeſs are the moſt valuable, and prefer them, however inferior, to others they know little or nothing of. Thus political opinions, public affection and averſion, and the national attachment, in every ſociety, become eſtabliſhed and fixed. And hence it is, that a republican prefers the diſorder and confuſion to which he has been familiariſed by education, to the ſubſtantial ſafety and bleſſings of a mixed monarchy; and the enſlaved Spaniard or Turk, the cruel deſpotiſm of their reſpective tyrants, to the mild and certain protection of the beſt formed governments.

To

To illuſtrate this truth yet further, let us ſuppoſe, that Charles the Second had, at the Reſtoration, done what his predeceſſor James the Firſt did in America, *viz.* that he had eſtabliſhed all the corporations, and inferior ſocieties in Britain, on principles merely monarchical, declaring, that the people within them ſhould be governed by "ſuch laws, "ordinances, and inſtitutions," as ſhould be made and given by himſelf and his ſucceſſors, to the excluſion of the authority of Parliament; or that he had in Britain, as he did in America, inſtituted throughout the kingdom, a number of democratical ſocieties and corporations independent both of the Crown and Parliament; it is eaſy to perceive what muſt have been the unhappy conſequences. In the firſt inſtance, the Britiſh Government would have been changed from a mixed form into an abſolute monarchy, and the people ſubjected to the deſpotic will of their Prince; in the ſecond, into a number of diminutive democracies, perpetually liable to all the miſchiefs of faction, diſcord, and confuſion. And in both inſtances, thoſe principles of polity upon which the beautiful and excellent fabric of the Britiſh Conſtitution is founded,

would

would have been long ere this time totally eradicated. Education, that tyrant of the human mind, which ſeldom fails to bind it in fetters never to be looſened, would have rendered Britons as fond of their tyranny or anarchy, as the Spaniard or the Swiſs.

CHAP. II.

On the fundamental Principles of the Britiſh Government.

IN every ſociety, I have already obſerved, there are certain peculiar and eſſential principles. Thoſe principles are the original decrees and fundamental laws which preciſely deſcribe the form of its Government, create all the various parts and members of the politic ſyſtem, and ſettle and define the powers, duties, rights, and privileges, of every member, whether corporate, official or individual, marking their limitations, extent, and different uſes. It is theſe decrees which form the great baſis of the State, upon which the ſtructure of its Government is eſtabliſhed, and by ſtrict adherence to which it can alone be preſerved. And as they are the fundamental rules by which the particular form of the ſociety is to be ever maintained, they are in their nature unalterable, except by general conſent, or by the ſupreme authority of the State.

The Britiſh Government is of a mixed kind, and may be juſtly ſtyled a mixed monarchy, formed by a different modification, and a profoundly wiſe adjuſtment and counterpoiſe of the great eſſential principles of the three ſimple forms, with a Monarch at its head. Its fundamental laws and eſſential principles are to be ſeen in the great charter of rights, often before, but particularly and clearly ſettled and confirmed at the Revolution. Much might be juſtly ſaid in the ſtyle of panegyric on the wiſdom which formed it, and on the excellence of its ſtructure. But it muſt here ſuffice to obſerve, that the greateſt authors of credit, whether Britiſh or foreigners, acknowledge, that of all ſyſtems of polity, it is the beſt calculated to preſerve and ſecure the natural and reaſonable rights of mankind.

In the conſtruction of this moſt excellent fabric, if we may decide on the motives of our anceſtors from evident hiſtorical facts, we may conclude, that either from reaſon or experience, or perhaps from both, they perceived the miſchiefs incident to the ſimple forms of Government.

1. That

1. That the tranſition from monarchy to tyranny was eaſy, natural, and certain.

2. That ariſtocracy was ever productive either of deſpotiſm, or of wild and confuſed dominion; that when union and harmony exiſted in its ſupreme council, it often degenerated into tyranny; and whenever jealouſy, diviſions, and competition for power aroſe, into debility and anarchy. And

3. That democracy was ever tumultuous, ſeditious, and weak; incapable of preſerving its internal peace, or defending its ſubjects againſt an external enemy. That a frequent change of rulers alternately contending for power over their competitors, as well as over the ſociety in general, created a perpetual diſcord and animoſity among the members of the State, introduced a diverſity and inſtability in their laws, and conſequently in the habits, manners, and attachments of the people; rendered the Government itſelf factious, weak, and confuſed, and ſubverted that ſecurity of the natural rights of man, which is the ſole aim and end of their entering into civil ſociety.

Impreſſed with theſe juſt ideas of the miſchiefs incident to the three ſimple forms of Government, our anceſtors, like the ſkilful phyſician, who mixes up medicinal ſimples of different and opponent qualities, in order to moderate their violent and dangerous extremes, and to produce from the whole a ſalutary effect, judiciouſly tempered the principles of the ſimple forms of Government together, ſo as to obtain what mankind have in view by entering into civil ſociety, namely, natural liberty perfectly and juſtly regulated and ſecured by political laws, or, at leaſt, as much ſo as human wiſdom could direct. They placed monarchy and democracy, the two dangerous extremes of civil policy, in oppoſite ſcales, as a check and balance to each other.

But wiſely reflecting that two oppoſite and independent principles, acting within the ſame ſphere, would ſoon become competitors for ſuperiority, and naturally lead them to invade the rights of each other; and that this muſt throw the ſociety into diſorder, and in the end deſtroy it, they yet more judiciouſly added to the ſyſtem, an indifferent, diſintereſted

tereſted, and independent power, which ſhould ſee and feel it to be both its intereſt and duty, to throw its weight into the ſcale oppoſite to that which ſhould be found exceeding its preſcribed bounds, and acting inconſiſtently with the ſafety and deſign of its inſtitution; and to reſtore, at all times, whenever enervated, the true principles of the conſtitution to their perfect balance and former energy.

Upon theſe principles the Britiſh State, conſiſting of three different independent orders, was eſtabliſhed. And to prevent all contrariety and confuſion in the laws, they were incorporated with each other by a fundamental decree, that the aſſent of all ſhould be ever neceſſary to the validity of every act, or final deciſion, by which the ſociety ſhould in future be governed. And the more effectually to enable them to maintain theſe reſpective ſhares of power in the State, and to check and balance the exceſs of legal authority in each other, they were veſted with certain diſtinct and independent rights, powers, and privileges, perfectly limited and defined, and adapted to their reſpective eſtabliſhments.

And

And as all laws muſt be nugatory and ineffectual without execution, there was, of neceſſity, appointed a ſupreme executive authority, the repreſentative and truſtee of the legiſlature, to ſuperintend the preſervation of the ſociety, by carrying into execution the fundamental decrees of the ſociety, as well as the ſupreme will of the legiſlature, from time to time ſignified by its laws; to appoint and regulate, agreeably to their direction, and the ſpirit of the conſtitution, the ſeveral inferior orders and members of the State, whether political, official, or individual; and to ſuperintend the allegiance and obedience of the ſubject to whatever the conſtitution and its laws commanded.

To be more circumſtantial, it is evident from an examination of the Britiſh Government, that its fundamental principles and laws are,

1. That the ſupreme legiſlative authority ſhould conſiſt of three orders or eſtates: A Monarch, who ſhall hold his office in hereditary ſucceſſion; a Houſe of Lords, who

ſhall derive their dignity and power from that monarch, and yet be equally independent of him and of the people, holding their dignity and rank in hereditary ſucceſſion; a Houſe of Commons, the repreſentatives of the people, deriving from them their authority; and that the monarch ſhould be the ſupreme or firſt in dignity in the *Supreme Legiſlative Council.*

2. That each of the three orders ſhould poſſeſs their peculiar and independent rights, powers and privileges, to enable them to ſupport their reſpective ranks and power in the State.

3. That their joint concurrence and aſſent ſhould be neceſſary to the validity of all legiſlative acts and regulations, becauſe, upon this joint concurrence, the unity of the State, and the uniformity and harmony of its conduct, and conſequently its ſtrength, ſafety, and happineſs, depend.

4. That there ſhould be one *ſovereign repreſentative* of the three legiſlative branches of the State, whoſe office and duty it ſhould

ſhould be to ſuperintend the preſervation of the fundamental principles and laws of the ſociety, to conſtitute the inferior political bodies and offices, agreeably to thoſe principles and laws; and to carry into preſent execution all their joint deciſions throughout all its territories and dominions.

5. That neither the King, Lords, nor Commons legiſlative, nor the King, their *ſovereign repreſentative*, ſhould poſſeſs a power to alter or weaken the conſtitution of the State, or to do any act inconſiſtent with its fundamental laws, or diveſt either himſelf or his ſucceſſors, or either of the Houſes of Parliament, of their diſtinct and ſeparate rights, powers, and privileges; becauſe they were veſted in them for the preſervation, and not the deſtruction, of the State, and becauſe they are not their private rights, but an unalienable truſt in them for their ſucceſſors.

6. That theſe fundamental laws ſhould ever be in their nature unchangeable, and not be violated or impaired by any of the diſtinct orders of the State, and only by the general

conſent of the ſociety, or by its ſupreme legiſlative authority.

7. That the common law, which has been ſanctioned by ancient uſage, and the ſtatutes enacted by the legiſlature, ſhould be the great lines by which the conduct of the whole ſociety, and the obligations of duty and obedience, ſhould be meaſured and directed.

Having this abſtract view of the Britiſh Government before us, which I have thought a neceſſary foundation for my ſubſequent arguments, it will enable me to draw nearer to the matter I mean to examine, which will be ſeen in the following Chapters.

CHAP. III.

On the Extent and Limitations of the Rights veſted in the Crown, to eſtabliſh inferior Societies or Corporations.

THE right of conſtituting inferior ſocieties, as I have before ſhewn, is lodged in the Crown; but it is unfortunate, that of all the prerogatives this has been the leaſt aſcertained. Very little reſpecting it is to be found in the authors who have treated on the fundamental or general laws of the Britiſh conſtitution. It therefore ſeems, that the conduct of the Kings of this realm, in the exerciſe of this right, has not been called in queſtion. They have been left to exerciſe it in a manner altogether arbitrary, without oppoſition. That this ſhould be the caſe in a free Government, where the illegal conduct of the ſeveral orders of the State has been ſo conſtantly watched and oppoſed, upon firſt conſideration, appears a little ſtrange. The reader will expect an attempt at leaſt to account for this political paradox.

The exercise of this prerogative is local. It does not, like many others, immediately affect the society in general. None are concerned in it but the Crown and the individuals incorporated. The concurrent assent of the King, and of those individuals, is therefore only necessary to the use of it; and it is not reasonably to be expected, that the latter will complain of it, however illegally exercised; because the privileges granted are always more extensive than those held under the general establishments of the principal society. Besides, the mischiefs arising from an illegal exercise of it to the society at large, are so remote, so gradual in their increase, so secret in their operations and effects, that they are scarcely perceived, and therefore do not alarm the people, nor become the subject of legal discussion. To which I may add, that the most licentious and arbitrary use of this prerogative having been made in the institutions of the inferior communities in our foreign dominions, its mischievous and dangerous effects to the union and welfare of the principal society have been concealed from the jealous eyes of Britons.

But

But although we have not legal adjudications to aſcertain the extent of this prerogative, yet principles from which it may be traced, and laws by which it may be perfectly known, are not wanting. Its true limitations are to be found, clearly defined, in the original decrees and fundamental laws of the Britiſh Government. Here every right, power, and privilege, veſted in the ſeveral orders of the State, is conferred for the ſame intent and purpoſe; namely, to ſtrengthen, not to weaken, to preſerve, not to deſtroy, the eſtabliſhed conſtitution. By this firſt and great law, which is eſſential to every civil ſociety, and cannot be abrogated, the powers of every eſtabliſhment, from the ſovereignty down to the loweſt miniſterial office, is limited and reſtrained. And if on any occaſion their acts ſhould have a different tendency, *they are void in themſelves*. If this was not the law in every ſociety, the rights and powers, which, by the original decrees of the State, were created and eſtabliſhed to preſerve the civil conſtitution, might, at the pleaſure of the perſons holding them, be deſtroyed *.

The

* Although the truths contained in this paragraph are ſelf-evident, it may not be diſpleaſing to the reader to know,

The monarch in the Britiſh Government as I have ſhewn, poſſeſſes two capacities. In one, he is

that they are confirmed by every author of credit on politic law; ſuch as Puffendorff, Monteſquieu, Vattel, Burlamaqui, &c. The opinion of the laſt, becauſe delivered with the moſt conciſeneſs and perſpicuity, I ſhall here add. This ingenious author, treating "of the eſſential Characters of Sovereignty, its Modifications, Extent, and Limits," tells us, "That it entirely depends on a free people to inveſt "the ſovereigns, whom they place over their heads, with an "authority either *abſolute*, or *limited by certain laws*, pro- "vided theſe laws contain nothing contrary to juſtice, nor "to the end of Government. Theſe regulations, by which "the ſupreme authority is kept within bounds, are called "the *fundamental laws* of the State."

"The *fundamental laws* of a State are not only the decrees "by which the *entire body of the nation* determine the form of "Government, and the manner of ſucceeding to the Crown; "but are likewiſe the covenants betwixt the people and the "perſons on whom they confer the ſovereignty, *which re-* "*gulate the manner of Government*, and by which the *ſupreme* "*authority* is *limited*."

"Theſe regulations are called *fundamental laws*, becauſe "they are the *baſis*, as it were, and *foundation of the State*, "on which the ſtructure of its Government is raiſed; and "becauſe the people look on them as their *principal ſtrength* "*and ſupport*."

"The fundamental laws are the precautions taken by the "people to oblige ſovereigns to employ their authority, "agreeably to the *general rule* of the *public good*."

And in another place he adds, "After the King has "aſſumed his authority, whatever he attempts afterwards, "contrary to the formal engagement he has entered into, "ſhall be *null and void*. And even if there ſhould happen "an extraordinary caſe, in which the ſovereign thought it

"conducive

is the firſt and moſt dignified of the three orders of the ſupreme authority. In this capacity, it is his right, after deliberation, to diſapprove, or finally to give validity to all acts intended for the regulation and government of the ſociety. In the other capacity, he is the ſovereign executive authority, bound to obſerve himſelf, and to compel the obedience of all the members to the original decrees upon which the ſtructure of the Government is raiſed, and to carry every other ſubſequent law of the ſupreme authority, made for the preſervation and ſafety of the ſociety, into perfect execution. To enable him to do this, certain peculiar rights and powers, called *prerogatives*, and among others, thoſe for conſtituting inferior communities or corporations, have been veſted in him; all of them for the purpoſe of maintaining the rights, powers, principles, and particular polity eſtabliſhed in the form and

" conducive to the public good to deviate from the funda-
" mental laws, he is not *allowed to do it, of his own head, in*
" *contempt of his ſolemn engagement, but in that caſe, he muſt*
" *conſult the people, or their repreſentatives.* Otherwiſe, *under*
" *pretence* of ſome neceſſity or utility, the ſovereign might
" eaſily break his word, and fruſtrate the effects of thoſe
" precautions taken by the nation to *limit his power.*"

ſtructure

ſtructure of the mixed Government of which he is the ſovereign executive head.

In a politic capacity thus limited and reſtrained, it is not difficult to mention a variety of acts, which the monarch cannot, i. e. ought not, becauſe forbid by the fundamental laws to do, and which when done, are void in themſelves. It is a maxim of the Britiſh conſtitution, that "*the King can do no wrong.*" This maxim, when rightly explained by the laws, of which it is a part, means no more than this. The King, in his natural capacity as a man, is liable to human frailties, and therefore may err; but in his politic capacity, in which the conſtitution alone conſiders his acts, where he has the aid of wiſe men, and the certain rule of the original decrees and general laws to direct his actions, it ſhall be preſumed that he will not violate his truſt, nor deviate from the fundamental decrees preſcribed for the rule of his conduct; and if he ſhould be led into an error, it ſhall rather be imputed to his counſellors than to him; and principally, becauſe every act of the King, which is inconſiſtent with the law, is

void

void in itſelf; and an act void can neither injure the orders of the State, nor any of its political members, nor even any individual of the ſociety, inaſmuch as the Government is eſtabliſhed on principles which give to every member a perfect remedy for every wrong received. Upon this confidence and policy, in order to preſerve the dignity of the monarch, and to ſecure his conduct from cenſure, and his perſon from danger, which is of the firſt importance to the ſafety of the ſociety, this maxim has been wiſely adapted. If this mode of reaſoning be juſt, as I truſt it is, this maxim amounts to no more than that, when the King ſtrictly conforms to the original decrees, and the ſubſequent laws of the ſociety, "he can do no wrong." And when he does not conform, in the exerciſe of his royal prerogatives, his acts, though void in themſelves, ſhall not be imputed to him, neither in his natural nor political capacity; becauſe the law gives to the party injured by a violation of his political truſt, a perfect remedy. Under this conſtruction the maxim is reconciled to reaſon; to that profound wiſdom upon which our truly excellent ſyſtem

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of polity is founded. But when we contend, as has been contended, that every charter granted by the Crown to individuals, muſt, by the ſanctity of the compact, however diſſonant to the original decrees of the ſociety, and inconſiſtent with its ſafety and happineſs, remain valid and inviolable; it involves the moſt evident of all political abſurdities *.

Under this expoſition of the maxim, there are many acts which a King cannot do legally; or, if he ſhould do them contrary to law, they are *void in themſelves*, ought to have no legal effect, and are to be conſidered as *not done*.

1. A King cannot alter the eſtabliſhed conſtitution of the Government, nor do any act which has that tendency, becauſe he is appointed to maintain it.

* In this light the learned Burlamaqui underſtands this maxim: for, ſpeaking of limited ſovereignty, he ſays, "It is "a happy incapacity in Kings, *not to be able to act contrary* "*to the laws of the land.*"

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2. He cannot take away the rights of either of the Houſes of Parliament; nor even thoſe properly belonging to the loweſt in order of the members of the ſociety; becauſe they are not his, but the rights of others, and veſted in them for the preſervation of the Government. Nor can he diveſt the Crown of any of its prerogatives, becauſe they are veſted in him in truſt for the public ſafety, and are not only his, but the fiduciary rights of his ſucceſſors, and are therefore in their nature unalienable.

3. He may conſtitute courts of juſtice within the dominions of the State, wherever neceſſary; but he cannot erect a new one to interfere with the juriſdiction of another already eſtabliſhed, or in mode or ſubſtance variant from the eſtabliſhed law and cuſtom of the realm.

4. He may appoint to offices known to the laws, but he can neither conſtitute a new office unknown in the Conſtitution, nor grant to an old one new principles or powers, inconſiſtent with its laws. There

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are ſome offices grantable during good behaviour, becauſe intended by the ſpirit of the conſtitution to be independent of the Crown; and others during pleaſure, becauſe meant to be dependent on it. The nature and ſafety of the ſociety requiring it; he cannot, therefore, grant the firſt *during pleaſure*, nor the laſt during *good behaviour*. He may conſtitute a Lord Lieutenant of Ireland, or of a county, or a governor of a province, but he cannot grant to them an eſtate for life, in tail or in fee, in thoſe offices, becauſe it would deprive the ſovereign executive power of the State of its ſuperintendence, check, and controul, over the illegal and licentious conduct of the ſervants of the Crown, and of compelling them to act agreeably to the eſſential and fundamental laws. He would be no longer the great conſervator of the peace and harmony of the ſociety which is placed under his immediate care and direction.

5. For reaſons equally evident, he cannot conſtitute inferior communities with rights, powers, and privileges independent of the State; becauſe this would be either to diſmember them from it, or to eſtabliſh an

imperium in imperio, a State within a State, the greateſt of all political MONSTERS * ! nor with ſuch privileges as are repugnant to, or variant from, the eſſential principles of the ſociety; becauſe this would beget competition and diſcord, and throw the ſyſtem of Government into irretrievable confuſion.

6. He cannot do any act whatever, by which the ſubordination and obedience of the inferior politic ſocieties to the ſupreme authority ſhall be relinquiſhed, or in any degree diminiſhed; and conſequently he cannot

* The learned Puffendorff, in treating of the eſtabliſhment of inferior ſocieties, tells us, "That they may be either lawfully or unlawfully conſtituted. And that with regard to "all *lawful bodies*, it is to be obſerved, that whatever rights "Kings poſſeſs, or whatever power they hold over their "members, is all under the determination of the ſupreme "authority, which it ought, on no account, *to oppoſe* or "*overbalance*. For otherwiſe, if there could be a body of "men, *not ſubject to the regulations of the civil Government*, "there would be *a State within a State*. If we look on theſe "bodies or ſyſtems in a State already ſettled, we are then "to conſider what was the intent of the ſupreme Governor "in *founding* or *confirming ſuch a Company*; for if he hath "given or aſcertained to them, in expreſs words, an *abſolute* "*independent right* with regard even to *ſome particular affairs*, "then he hath *plainly abdicated his authority*, and, by admitting *two heads* in the conſtitution, hath rendered it *irregular* "and MONSTROUS."

exempt

exempt them from that authority in any caſe, and more eſpecially in matters of taxation, upon which the defence and ſafety of every part of the empire materially and eſſentially depend.

7. Although he may grant to them a right to make municipal laws, for the better proſecution and advancement of their particular deſigns, and for local purpoſes, yet he cannot diſcharge them from the force of the general laws of the land, from the common and ſtatute law. They are the general inſtitutes which were intended to pervade the whole ſociety, for the government of its morals, and to preſerve an uniſon of opinion and attachment in all the members in regard to the State. The firſt has been ſettled and confirmed by ancient uſage and immemorial conſent; and the ſecond conſiſts of acts of the ſupreme authority; and no inferior power can, without a palpable abſurdity, be preſumed to have a right to abrogate or alter ſuch acts.

8. A King may grant to an inferior community a power to raiſe money for the ſupport of its members, for the preſervation of the order,

order, peace, and œconomy of the body politic, and to promote the particular deſigns of its inſtitution; but he cannot give to it a right to grant, raiſe, and levy national aids, nor even its proportion of them.

1. Becauſe this right does not belong to him, and neither a King nor a man can give what he has not. It is the peculiar right of the ſupreme authority, to whoſe care and ſuperintendance the protection and defence of the ſociety are in the firſt inſtance committed, and which, of neceſſary conſequence, ought alone to poſſeſs the right of taking from individuals a juſt proportion of their property, for the ſafety of the reſt, and the ſecurity of their perſons.

2. Becauſe this would be a diminution of the rights of the ſupreme legiſlature in a point moſt eſſential to the ſafety of ſociety, and in a matter upon which that authority, and none other, can poſſibly be competent to judge and decide.

3. Becauſe no inferior ſociety ever was, nor can be, made competent to the exerciſe

of this right. They cannot poſſeſs a capacity to judge either of the occaſion, or neceſſity, or of the quantity of aids neceſſary to the national defence, nor to obtain that information which is neceſſary to enable them to aſcertain their own proportions, as they cannot poſſeſs a power over the other parts of the ſociety.

4. Becauſe thoſe inferior ſocieties, having local, partial, and different intereſts and prejudices, and being liable in their deliberations and deciſions to the influence of thoſe intereſts and local prejudices, there can be no certainty, no confidence repoſed in them, that they will diſcharge whenever neceſſary, or with equity and juſtice to the reſt of the nation, this primary and moſt eſſential of all political duties.

5. If the executive authority may grant ſuch a privilege to one inferior ſociety, it may to a hundred, or to all, and by theſe means effectually diveſt the Parliament of the right to determine on the occaſion, the neceſſity or quantity of aids requiſite to the general ſafety; a right which forms the firſt

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and greateſt check againſt the abſolute authority of the Crown, and is indiſpenſably neceſſary to the ſafety of the ſociety.

Although a King may incorporate inferior ſocieties, or bodies politic, yet he cannot confer a right to another to make ſuch incorporation, becauſe the right is a *royal* and unalienable franchiſe; nor can he by his own act, much leſs by a delegated authority, conſtitute them in any form, or upon any principles of polity, repugnant to, or variant from, the form and ſpirit of the Britiſh conſtitution; for this would ſubvert its different eſtabliſhments, and deſtroy their union and harmony.

Laſtly, this prerogative is ſettled in the Crown, to enable it to maintain, not to weaken, to preſerve, not to deſtroy, the order, unity, and ſpirit of the Government. The Government is a mixed monarchy, ſo formed and eſtabliſhed as to check and ſuppreſs the licentiouſneſs and arbitrary power of the three ſimple forms of civil ſociety, and to reduce their exceſſes to that balance which is neceſſary to human liberty

and happineſs. It is therefore a concluſion drawn from the ſtrongeſt principles of reaſon, that a King cannot conſtitute theſe inferior ſocieties without thoſe checks and that balance; nor on principles purely monarchical, ariſtocratical, or democratical, or in ſuch manner as to render the principles of either ſo predominant, as to be able to ſuppreſs the due weight and influence of the others in the ſcale of Government: for by this means he may imperceptibly efface all reſpect and attachment to the form of our excellent civil conſtitution, throw it into diſorder and confuſion, and in the whirlwind direct the ſtorm to abſolute monarchy.

From theſe limitations of the prerogative of the Crown, we may eaſily perceive what ought to be the forms of the inferior ſocieties in a mixed monarchy. But to make the argument more evident, I ſhall firſt explain what they ought to be, agreeably to the fundamental rules of the three ſimple forms of civil ſociety; for all of them have their fundamental laws, from which the ſovereign authority, or its executive repreſentative,

ought

ought never to deviate. In a monarchy, theſe inferior ſocieties, by the fundamental laws of its conſtitution, ought to be governed by a ſingle perſon appointed by the monarch, and removable at his pleaſure. This perſon ought to hold both the legiſlative and executive authority within the corporation. In an ariſtocracy, they ſhould be governed by a ſelect dignified few; and in a democracy, by a number of perſons often elected by the people to repreſent them. In this manner only can the nature, uniformity, and ſpirit of each ſyſtem, and the ſubordination of its members to the State, be duly preſerved.

In a mixed monarchy, the ſtructure of its inferior ſocieties ought in like manner to correſpond with that of the State. It ſhould conſiſt of a governor, or chief magiſtrate, appointed by the Crown, and removeable at its pleaſure; of a council, deriving their dignity and power alſo from the Crown, but after appointment, equally independent of it and the people; and of a body of men elected by the people to repreſent them in the inferior body politic; and each of them ſhould be veſted with their diſtinct independent rights,

but only with one joint legiſlative authority over the ſociety, and that for local purpoſes; and the chief magiſtrate ought to hold the executive rights and powers, ſubject to the directions of the ſupreme executive magiſtrate. The body politic thus ſubordinate, muſt be ſubject in all things, in its legiſlative capacity, to the ſupreme authority of the State. In ſhort, to make a perfect corporation under any Government, be its form what it may, it ought, in all ſound policy, and muſt be, if agreeable to the fundamental laws of the State, eſtabliſhed on the ſame principles with thoſe of the great politic body to which it belongs. In this caſe the powers, rights, and privileges of the inferior community, will accord with, and ſtrengthen thoſe of the State, be productive of the ſame ſpirit of laws and cuſtoms, and inculcate and fix in the people the ſame manners, habits, political opinions, averſions, and attachments. They will be daily inſtructed to love and venerate the principles of the chief Government, becauſe they receive their general protection and their particular privileges from them. All repugnant prin-

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ciples will be excluded, and indeed unknown; and all the members of the ſociety, however diſperſed, will be led to act in a conſtant and uniform manner, with one will, directed to the ſame ends, the ſafety of the Government, and the public happineſs.

To place this truth in a light yet more evident, let us ſuppoſe that a King of England, who is the ſupreme repreſentative of the three ſeveral orders of the State, and bound to preſerve their balance, influence and authority throughout its dominions, under pretext of his prerogative, ſhould conſtitute all the inferior ſocieties within the realm on monarchical principles, by conferring on a ſingle perſon the ſole power of making laws for the corporation, and ſuperintending the execution of them; or ſhould he eſtabliſh them on the principles of an ariſtocracy; would not every candid and ſenſible man, who knows the nature and excellence of our preſent Government, pronounce with one voice, that it was an act inconſiſtent with the fundamental laws of our ſociety, *done without authority, and void from the beginning?*

ning? And would not even the republicans, who have ſtood forth the zealous advocates of the democratical American charters, be the loudeſt in their clamours againſt ſuch innovations?

To conclude theſe reflections: If the prerogatives of the Crown, in a mixed monarchy, are limited, in one reſpect, by the fundamental decrees of the ſociety, they are in all. And if they are conferred on the Monarch for the purpoſe of preſerving the uniformity of the State, and an harmony in the opinions of its members reſpecting its excellence, that which relates to the inſtitution of inferior politic ſocieties muſt be confined to the principles and reſtrictions I have before laid down. For if the Crown may deviate in any degree from the original polity and fundamental laws of the principal ſociety in the eſtabliſhment of its ſubordinate members, there are no other lines by which it may be reſtrained, none by which its extent may be decided. It is ſuffered to paſs over the only boundaries ſettled by the conſtitution, into a field unlimited, and becomes unreſtrained and arbitrary. And to ſuppoſe this

this in a ſociety where the rights and powers of every member of the State, from the ſovereign authority down to a petty conſtable, are preciſely aſcertained and limited, is what all common ſenſe will reject, and no ſophiſtry can ſupport.

CHAP. IV.

On the Right of Property in the Territory of the American Colonies.

WHATEVER has been hitherto obſerved on the General Principles of Government, on thoſe of the Britiſh State, and on the Right and Prerogative of the Crown to conſtitute inferior Societies, is intended as a foundation to ſupport the ſubſequent reflections on the Provincial Governments; and yet one thing more remains to be added, before I proceed to them. A queſtion has been made, in *whom* the property and dominion in the Colonies is rightfully veſted? whether in the King, in ſome capacity diſtinct from, and independent of, his truſt and political relation to the Britiſh State, or in him as the monarchical and executive repreſentative of it?

This diſtinction has been invented by that part of the Coloniſts, who had reſolved, in deſpite of the moſt extenſive benefits received, and the awful obligations of their oaths,

oaths, to throw off their allegiance to the Britiſh Government, and to form themſelves into independent States. For this purpoſe, they have acknowledged that their allegiance was due to the King in ſome capacity diſtinct from his relation to the State, while they have denied it to be due to the Parliament. They artfully and wiſely concluded, that ſhould they ſucceed in breaking the harmony between the Crown and the Parliament, and in rendering their powers independent of each other, jealouſies would enſue, and that the latter would never aſſiſt the former in ſupporting his power over a people, who might be made the inſtruments of their own deſtruction. Upon this firm ground they further concluded, that when this ſeparation of intereſts between the King and the Parliament ſhould be effected, the taſk of throwing off their allegiance to the King would become eaſy. And therefore, to ſupport this novel diſtinction, they have contended, that the diſcovery and ſettlement of America was made to *the uſe of the King only*, and not to the *uſe of the State, nor for the benefit of the Britiſh ſociety*.

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However novel and ſtrange this diſtinction may appear to thoſe who are acquainted with the principles of our Government, we have ſeen it warmly adopted by a number of men who ſtyle themſelves Patriots, ſome of them of no leſs dignity than Britiſh Senators, and particularly by one of their moſt ſenſible leaders. This Gentleman §, in a plan laid before the public, has propoſed, upon the imaginary juſtice and equity of this mode of reaſoning, to erect each provincial Aſſembly into an independent Legiſlature, depriving the Parliament of all authority over it, and leaving it ſubject only to the prerogatives of the Crown. That a man of ſenſe ſhould be ſo loſt to conſiſtency of character, as in the ſame breath to profeſs the warmeſt attachment and love for his country, and to propoſe a plan ſo ruinous to its true intereſt and welfare, is really aſtoniſhing.

However, ill-founded and abſurd as this diſtinction may be, ſeeing it has been made to juſtify rebellion, and has been warmly

§ Mr. Burke.

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eſpouſed by ſome of thoſe who are entruſted with the ſacred rights and welfare of their country; it calls for ſome attention. A little will ſhow its fallacy. The manner of the diſcovery of America, the authority under which it was made, and the right of property and dominion acquired by it, afford unequivocal and perfect evidence of the truth.

The Colonies were diſcovered at the cloſe of the fifteenth century, by Sebaſtian Cabot, under a commiſſion granted by Henry the Seventh. Henry poſſeſſed only two capacities in which he could acquire property, one private as a man, the other public as the ſupreme executive repreſentative of the King, Lords, and Commons, of England. In the firſt, he could take property to his own uſe; in the ſecond, territory and dominion to the uſe of the State. The commiſſion was iſſued under the *great ſeal of the State*, the ſymbol of its ſovereign authority, which proves, that he acted in his *politic*, and not in his *private* capacity. The language of the Commiſſion, in every clauſe, ſpeaks the ſame truth. It is, "*We*" in his *politic*, and not in his *private* capacity, give and grant licence to ſail in purſuit

purſuit of diſcoveries, under "our," not under "*my*" *banners, ſtandards, and inſignia*,"— "to affix *our* aforeſaid banners, ſtandards, "and inſignia, on any iſland or continent "newly diſcovered;" and to poſſeſs and occupy "ſuch diſcovered territory as our vaſſals" (that is ſubjects) "obtaining for *us* the domi- "nion, title and juriſdiction of the iſland and "continents ſo diſcovered."

Had Henry given this commiſſion in his private capacity, as an individual member of the Britiſh State, the language of the patent would have been, "I give and grant, &c." and not "We;" he would have ſpoke in his private, and not in his politic capacity; or if ſuch was his intention, whence did he derive his right? The moment he laid aſide his politic capacity, he became a ſubject, to be governed and directed in his actions by the laws of the ſociety; and a ſubject could have no right to affix the ſeal of the State to his deed; no right to grant to others a licence for the diſcovery of countries; nor to change and tranſfer the allegiance of ſubjects due to him in his politic capacity as Sovereign of the Britiſh State, to himſelf, in his private, or any other

capacity. From all which it is evident, if there had been no expreſs declaration of the uſe of the territory diſcovered, that the diſcovery would not be to the uſe of the man who then was, or the man who ſhould thereafter be the King of England, but to the uſe of the State under whoſe commiſſion it was made by one of its ſubjects. And therefore, upon the diſcovery, the territory became legally veſted in Henry and his ſucceſſors, the ſupreme repreſentative of the King, Lords, and Commons, the politic truſtees and guardians of the people of Great Britain. Thus poſſeſſed of the Colonies, they became involved with his other political truſts, and inſeparably annexed to the realm; and conſequently they deſcended to his ſucceſſors in like truſt, and ſubject to the ſupreme legiſlative authority of the State, whoſe agent he was, and by virtue of whoſe authority he acquired the property.

CHAP. V.

On the Royal Governments.

AMERICA being thus annexed to the kingdom of England, became an object of its Government, and conſequently of the exerciſe of the royal prerogative. The ſettlement, and government of the country required a diviſion of it into diſtricts, and the eſtabliſhment of a number of incorporated and ſubordinate ſocieties. The ſuperintendence of the Crown and Parliament over them, and their conſtitutional relation and ſubordination to the State, required that they ſhould be veſted with certain limited powers and rights, to make bye-laws and ordinances for promoting the particular deſigns of their inſtitution, ſubject always to the controul of the ſupreme Legiſlature.

The rules by which this ought to have been done; or, to be more explicit, the rights, powers, and privileges, which ought to have been granted, with their modifications and ſpecial limitations, are clearly defined in the nature of the Britiſh Govern-

ment,

ment, and the fundamental laws which I have briefly recited in the ſecond chapter. Henry VII. under whoſe authority America was diſcovered, did not perform the taſk; he left it to his ſucceſſors. But whether they have, in their grants, confined themſelves to the bounds preſcribed by the fundamental laws of the State, which are the only proper teſts by which the lawfulneſs or illegality of the royal conduct muſt be decided in all caſes whatever, are queſtions of which the future ſafety of the Britiſh Empire ſeems to demand an immediate diſcuſſion.

To do this with candour, and to tread with caution in a path which has been almoſt unexplored, it will be neceſſary to take a view of the principles contained in the ſeveral proclamations and charters, under which the inferior ſocieties in America have been ſettled, and by comparing them with the fundamental laws of the State, to determine whether they are lawful or not.

And although not firſt in time, yet becauſe firſt in order, we will here conſider the ſtructure

of the Governments called Royal. Theſe have been formed by royal proclamations, on principles, which, though not ſo repugnant to the fundamental laws of the State as the proprietary and charter governments, yet are not calculated to ſupport the prerogatives of the Crown, nor the ariſtocratic influence of the Britiſh Conſtitution, nor do they by any means harmoniſe with the ſyſtem to which they belong.

Upon a firſt view of theſe Governments, one would imagine, that they were intended by the politicians who formed them, to contain the ſeveral political checks, and that balance of power which is ſo eſſential and beneficial in the principal ſociety; to carry the ſame policy down from the State to its inferior politic members; and to make the ſeveral branches of their legiſlature, as they ought to be, perfect repreſentations of thoſe of the State. But upon more intimate examination, we ſhall find, that the royal and ariſtocratical branches are little more than faint reſemblances, the rights of which are uncertain, and their powers and influence in the ſociety enfeebled in the modification of their eſtabliſhments; while the demo-

democratical aſſemblies have poſſeſſed all the rights, powers, and privileges, of the Houſe of Commons, to as great an extent, within the colony, as the Houſe of Commons itſelf within the realm.

Under the Royal Proclamations, there is a Governor appointed by the Crown, who holds his commiſſion during its pleaſure. This officer was certainly intended to be a perfect repreſentative of the Monarch; and to ſupport the ſame proportion of weight and influence in the inferior ſociety, as the King does in the State; and therefore he ought, like his royal Maſter, to be one of the checks in the inferior conſtitution againſt an exceſs of the ariſtocratic, but principally of the democratic influence, and conſequently independent of the other orders. And yet this officer is a perfect dependent for his ſupport, not on his royal Maſter, whoſe power and influence he is intended to preſerve, but on the people, whoſe licentiouſneſs he is appointed to check. In ſome of the Colonies, his ſalary is unſettled, and in others incompetent to the ſupport of his rank and dignity; and therefore

he is dependent on his Aſſembly, in a matter which muſt, human nature conſidered, bias his judgment, and weaken, if not totally deſtroy, his juſt influence.

There is alſo a council, or middle order of the inferior legiſlature, appointed under thoſe proclamations, but very diſſimilar to the ariſtocratic order of the Britiſh conſtitution. The members are taken from the common rank of people, there being no other. They are inveſted with no dignity, nor any thing elſe, to raiſe them above that rank, or to give them weight or reſpect in the ſociety. They have a temporary commiſſion, which may be ſuſpended at the pleaſure of a Governor, and revoked at the pleaſure of the Crown. Thus, this branch of the colonial legiſlatures has not that dignity, independence, and influence, which is neceſſary to check the illegal attempts of an arbitrary governor, or the ambitious and licentious deſigns of a popular aſſembly; both of which are abſolutely neceſſary in a mixed monarchy, to preſerve the peace and harmony of the inferior Government. For, as a friend to truth and my country, I muſt ſay, that former adminiſtra-

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tions have appointed Governors, whoſe ignorance and arbitrary diſpoſitions have wantonly ſported with the rights of the people, and greatly diminiſhed their allegiance to their Sovereign. But when I ſay this, I muſt declare that inſtances of this kind have been but rare, when compared with thoſe where the licentiouſneſs of the popular aſſemblies has attempted to invade the rights of the State. Thus the ariſtocratic balance, which conſtitutes the ſtrength and excellence of the Britiſh Government, is wanting in theſe inferior ſocieties, while the principles of monarchy weakly, and democracy firmly, eſtabliſhed, remain moſt injudiciouſly mixed, and oppoſed to each other. The conſequence of which is, that theſe two oppoſite principles are often at variance, and one of them, to increaſe its own power, frequently invades the rights of its antagoniſts with ſucceſs; there being no indifferent and diſintereſted influence to accommodate the difference, and check their illegal deſigns.

But it much oftener happens, as I have already hinted, that the rights of the Crown are invaded by the people, than thoſe of the people by the Governor. The latter, too

often more indifferent about the rights of the Crown than his annual ſupport, when it depends on the pleaſure of his aſſembly, is generally cautious of incroaching on their privileges. And he is ſo far from extending the prerogative beyond its juſt limits, that many inſtances may be produced, in which he has ſacrificed it to gratify the licentious deſigns of the popular aſſembly. But, on the other hand, the aſſemblies, who are ever watchful over what they conceive to be the rights of the people, and ever ambitious to extend their own powers, ſeldom miſs an opportunity of wreſting from a Governor the prerogatives of the Crown, and of increaſing their own weight in the ſcales of government. In theſe attempts, they have been in a variety of inſtances but too ſucceſsful. Indeed, it is not to be reaſonably expected, that a Governor thus dependent on the people, and on a council ſo truly inſignificant, and of the ſame rank with them, will heſitate, at times, to ſacrifice even the rights of royalty to republican ambition.

But ſhould every Governor poſſeſs a fixed and durable ſalary, he would be more attentive to his duty, and more firm

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in his oppoſition to popular claims; becauſe he would be altogether independent on the people, and only dependent on and accountable to the Crown, as he ought to be in all reaſon, and according to that policy upon which the Britiſh State is founded.

A Council conſiſting of men raiſed to a degree of dignity, independent, and durable, ſo as clearly to diſtinguiſh their rank in the ſociety above the common people, would ſee and feel it to be their invariable intereſt, conſtantly to preſerve a juſt balance between the exceſs of power in either of the other orders of the ſociety, to oppoſe at all times, as well the licentious attempts of aſſemblies, as the immoderate exerciſe of the prerogative in Governors, and to preſerve the juſt rights of both from violation; becauſe their rank, dignity, and weight, muſt depend on their preſerving this balance. For as they would form the ariſtocratic part of the ſociety, a prevalence of democratical power beyond its bounds would be equally dangerous to their rights and influence, as to thoſe of the Crown. Being in the ſame predicament, and liable to the ſame enemy, they would

unite with the Governor in oppoſing it, and maintain the ſame balance in the inferior ſociety, as is maintained in the State. Thus the prerogatives of the Crown would poſſeſs that ſecurity which they have in the principal ſociety, and of which they have ever been too long deſtitute in thoſe inferior politic bodies. The provincial governments thus conſtituted, would, as they ought, contain their own checks and balance; diſcords, dangerous to their internal peace, would be excluded; harmony would be preſerved; and much trouble ſaved to thoſe who immediately ſuperintend them.

By theſe amendments in the Royal Governments, they would be made to harmoniſe with the principal ſyſtem. Their polity would be the ſame, which would conſequently produce the ſame kind of laws, manners, and habits; the ſame principles, opinions, and attachments in the people, in reſpect to the excellence of the principal government; and as their honours, dignities, and offices, and their protection and happineſs, would all flow from the ſovereign authority of the Parent State, they would ſoon be compelled

pelled by the force of education, which is little ſhort of the inſtruction of nature, to love and revere the polity of the State itſelf. The national attachment in England and in America would be the ſame. Britons and Americans would have but one object, and be led by education to look up to one common ſovereign for that ſecurity, and thoſe bleſſings, which they expect to receive from civil ſociety. Here inclination and duty, enforced by their own intereſt, will lead them to unite, on all occaſions, to maintain and defend the State. Thus theſe inferior members of the politic, like thoſe of the natural body, when perfectly formed on their true principles, will harmoniſe with the principal ſyſtem, ſupport and ſtrengthen it.

But ſhould the Royal Governments be continued on their preſent defective plan, it muſt be abſurd to expect, that what has ſo often happened will not happen again. The ſame cauſes ſubſiſting, we muſt look for the ſame effects. The rights of the Crown and State will continue to be impaired by the neglect, want of firmneſs, or the private intereſts

tereſts of Governors, having no independent ariſtocratic principle to ſupport them, or to prevent their yielding to the licentious claims of the people. Laws and principles yet more diſſonant from thoſe of the Britiſh Conſtitution will take place, and of courſe, manners, habits, opinions, and attachments; until all true judgment of, and all affection and reſpect for, the excellence of a mixed form of government, are effaced by the over-prevalent principles of democracy. And whenever this ſhall happen, it is eaſy to perceive that the conſequence muſt be a total ſeparation of the two countries.

Conſidering theſe defects in the Royal Governments, and the miſchiefs which muſt naturally attend them, it is not unreaſonable to expect, that they will become very ſoon the objects of the ſerious attention of thoſe to whom the welfare and ſafety of the State are committed. The remedy is obvious, and the mouth of the patient is open to receive it. This will admit of the moſt evident demonſtration, if the general ſenſe of the people of the Colonies, declared in the

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firſt Congreſs, may be deemed ſuch demonſtration;—a Congreſs very different from thoſe which followed it. It was compoſed of many men of the firſt abilities and independent fortunes, who knew the ſenſe and wiſhes of the people. In this Congreſs, it was

"Reſolved, N. C. D. 10. It is indiſpen-
"ſably neceſſary to good government, and
"rendered eſſential by the Engliſh Conſtitu-
"tion, that *the conſtituent branches of the*
"*Legiſlature be independent of each other*;
"that, therefore, the exerciſe of legiſlative
"power in ſeveral Colonies, by a Council ap-
"pointed, during pleaſure, by the Crown, is
"unconſtitutional, dangerous, and deſtructive
"to the freedom of legiſlation."

Here, not only the miſchiefs I have pointed out in the Royal Governments, but the amendments propoſed, are declared to be neceſſary to the freedom of legiſlation, and rendered eſſential, by the fundamental laws of the Engliſh conſtitution, to the good government of the Colonies by the Americans themſelves. And a little conſideration will convince

vince us, that they are equally eſſential to the preſervation of the rights of the Crown, to the conformity and harmony which ought, in reaſon and ſound policy, to ſubſiſt between the State and its members, and of conſequence to the general peace and ſafety of the Empire.

This truth ſtands further confirmed by daily experience, which has, long ſince, taught us, that thoſe inferior ſocieties and corporations in Britain, as well as in America, which have been formed on principles the moſt variant from the eſſential polity of the State, have ever been the moſt ungovernable and licentious, and too often the ſcene of groundleſs diſcontent, faction, and tumult. In America, we know, that the internal peace and order of the Royal Governments have been better preſerved, and their public affairs have been more eaſily tranſacted, with much fewer conteſts and obſtructions to the public weal, than in either the proprietary or popular governments. Indeed, it is a fact which greatly confirms the argument, that the preſent rebellion aroſe, and firſt broke out, in the popular governments of New England. Pennſylvania

ſylvania next caught the infection, Maryland followed, and the Royal Governments, in general, were the laſt who embraced the treaſon. In Britain, we have long and often ſeen thoſe corporations, whoſe conſtitutions have been formed on democratical principles, and where popular influence has prevailed, filled with diſorder and tumult; and of late, they have aimed at nothing leſs, than to make thoſe alterations in the State which would reduce it to their own principles, deſtroy the balance of its powers, and throw it into democratical anarchy. Let us ſuppoſe, that the corporations of London and Briſtol had been eſtabliſhed on the true principles of the mixed monarchy of Britain; that they had contained the ſame checks and balance of power, which are ſettled in the State; that, inſtead of the chief Magiſtrate being appointed by the Aldermen and Common Council, he had been appointed by the Crown, and held his office during pleaſure; and that the Aldermen had been alſo appointed by the ſame authority during good behaviour; is there a perſon of the leaſt reflection, who can believe, that we ſhould have ſeen, within theſe corporations, that licentious ſpirit, that factious

factious oppoſition to the reaſonable meaſures of Government, that ſupport of, and combination with rebellion, which have too long perplexed the councils of the State? It is impoſſible in the nature of things. The Mayor being independent of the people, and accountable to the Crown, would naturally, on all proper occaſions, have ſupported its weight and authority within the inferior ſociety; and the Aldermen alſo independent of the Common Council, would have thrown their influence into the monarchical ſcale, as the only means of ſecuring their own independence and dignity, againſt the late republican and licentious ſpirit of the Common Council. The city of London would have been in perfect tranquillity and ſafety at the time of the late dreadful riots and conflagration, when every worthy inhabitant, even thoſe that had been deluded by the faction, thought their final ruin inevitable.

CHAP. VI.

Of the abrogated or obſolete Charters granted for the Settlement of America.

IT is not my deſign to travel minutely into the motives which induced the Sovereign to grant, or the people to accept of, the American charters. My principal view is to examine their polity, to ſhow their diſagreement with the fundamental laws and ſafety of the Empire, and to enquire whether our Kings poſſeſſed a right, under the eſtabliſhed conſtitution, to grant charters, in the manner, and on the principles, upon which they have been granted.

In this enquiry, whether we conſider thoſe charters which have been reſumed by the Crown, or thoſe that remained in force until deſtroyed and forfeited by the rebellion; it will appear from their own evidence, that all of them were ſo many acts inconſiſtent with the fundamental laws upon which the Britiſh government is eſtabliſhed; that their princi-

ciples conduced to render the people who ſhould ſettle under them, aliens in affection, and enemies from principle to the State of which they were ſubjects; and inſtead of ſtrengthening and ſupporting the mixed monarchy, they, by gradual and infallible means, tended to weaken and deſtroy its eſſential eſtabliſhments.

I ſhall paſs over, in ſilence, the Charters granted by Elizabeth †, as no ſettlement was made under them, and proceed to thoſe granted by James the Firſt to the Virginia companies. The firſt was granted in the year 1706, to Sir Thomas Gates, and his aſſociates. The territory conveyed, extended from the 34th to the 45th degree of northern latitude, including, what is now called, the Provinces of New Hampſhire, Maſſachuſſet's, Rhode Iſland, Connecticut, New York, New Jerſey, Pennſylvania, the Delaware counties, Maryland, Virginia, and North Carolina. This extenſive country was divided into two diſtricts, to be ſettled by different companies of adventurers, and to be

† To Sir Humphry Gilbert in 1578, and to Sir Walter Raleigh in 1585.

governed

governed by the ſame general principles of polity. For the government of the people, James reſerved a power to appoint one executive council in and for each province; another to be reſident in England, for the ſuperior management of both, but all under his direction, and liable to be removed by the royal pleaſure. The abſolute legiſlative authority was veſted in the King and his ſucceſſors. For, in the words of the charter, theſe councils were to "govern "and order *all matters and cauſes* which "ſhould ariſe, grow, or happen to or with-"in the ſame ſeveral colonies, according to "*ſuch laws, ordinances, and inſtructions*, as "ſhould be in that behalf given and ſigned "*with our hand*, or ſign manual, and paſs "under the *privy ſeal* of the realm of Eng-"land."

The ſecond of theſe charters was alſo granted by James the Firſt, in the year 1609, to Robert Earl of Saliſbury, and others. It expreſsly ſuperſeded all the powers of government conferred by the firſt, and was founded in principles in the oppoſite extreme, and equally inconſiſtent with the order, fundamental laws, and ſafety of the State. By this

charter, the company named in it, and "ſuch, and ſo many, as they ſhould admit "into their ſociety, whether they ſettled in "the colony," or "adventured their money, "goods, or chattels," were formed into a body politic by the name of "The Treaſurer "and Company of Adventurers and Planters "of the City of London, for the firſt Colony "of Virginia." For the government of the colony, or of this body politic, a council and treaſurer, to be reſident in England, were named and appointed in the charter. But it was declared, that "the ſaid council and "treaſurer, or any of them, ſhould be after-"wards nominated, choſen, continued, diſ-"placed, changed, altered, and ſupplied, as "death, or other ſeveral occaſions ſhould re-"quire, out of the company of the ſaid "*adventurers*, by the voice of the *greater* "*part of the ſaid company and adventurers*, "in their aſſembly for that purpoſe." And to this council, thus, from time to time, to be conſtituted, were granted "full power and "authority to nominate, conſtitute, ordain, "and confirm, by ſuch name and names, "ſtyle or ſtyles, all and ſingular the Gover-"nors, Officers, and Miniſters, which ſhould

"be

" be by them thought fit and needful to be " made and uſed for the government of the " colony or plantation."—" And alſo, to " make, ordain, and eſtabliſh, all manner of " *orders*, *laws*, *directions*, *inſtructions*, *forms*, " *and ceremonies of government and magiſ-* " *tracy*, fit and neceſſary for and concern- " ing the government of the ſaid colony or " plantation."

By the third American charter, granted by James the Firſt, in 1612, all the iſlands ſituate in the ocean, within 300 leagues of the coaſts of the firſt colony in Virginia, were granted to the Treaſurer and Company, and the ſame ſyſtem of polity eſtabliſhed in them. And it further contained a confirmation of former privileges, with this extraordinary clauſe, " any *ſtatute*, *act*, ordinance, proviſion, pro- " clamation, or *reſtraint*, to the contrary " thereof, heretofore made, ordained, or " provided in any wiſe notwithſtanding †."

† Such was the incompetent and confuſed government under theſe charters, that a writ of *Quo warranto* was iſſued, and judgment, declaring them void, was given by the court of King's Bench, in Trinity-term, 1624.

The fourth American charter, commonly called the Grand Plymouth Patent, was granted by Charles the Firſt, in the year 1628. (This charter included the territory granted to the ſecond Virginia colony.) The Grantees were veſted with power to make free of their ſociety, ſuch perſons as " they ſhould think " fit." They were authoriſed " to chuſe " annually, their governor, deputy gover- " nor, and aſſiſtants, out of the perſons ſo " denizened." On this politic body was conferred all the legiſlative and executive rights and powers neceſſary to a complete independent ſociety. Or, in the words of the charter, they were impowered " to make " laws and ordinances for the good and wel- " fare of the company, and for the govern- " ment of the lands and plantations, and the " people inhabiting, and to inhabit the ſame, " as to them, from time to time, ſhould be " thought meet; and to ſettle the forms and " ceremonies of government and magiſtracy, " and to name and ſtyle all ſorts of officers, " both ſuperior and inferior, diſtinguiſhing " and ſetting forth the ſeveral duties, powers, " and limits, of every ſuch office, and the " forms of the oaths to be reſpectively

" miniſtered

" miniſtered unto them, and to diſpoſe and " order the election of all ſuch officers †."

When we examine theſe charters by the laws which conferred the power on James and Charles to eſtabliſh inferior ſocieties, it is difficult to determine which of thoſe Princes acted moſt inconſiſtently with his truſt. It was certainly their duty, as the politic guardians of the Britiſh State, veſted with extraordinary prerogatives for preſerving its uniformity, and the relation and ſubordination of its different members, to eſtabliſh the inferior ſocieties on principles which accorded with the general polity of the State, and were directed by its fundamental laws. To have acted within the powers, and conſiſtent with the ſpirit of thoſe laws, they ſhould have eſtabliſhed the prerogative by the ſame rules, and in the ſame manner, as it is ſettled in the principal conſtitution. Their legiſlative powers ſhould have been founded in the ſame mixed polity, *i. e.* with the ſame kind of checks and balance of

† Upon a writ of *Quo warranto*, iſſued againſt this charter, judgment was given for the King in the High Court of Chancery, in Trinity-Term 1684.

power, in a ſubordinate degree, which they ſaw, were the baſis and ſtrength of the principal government. And above all, becauſe moſt neceſſary to the unity and uniformity of the ſociety, the ſupreme direction of the Parliament ſhould have been preſerved in as perfect right and vigour as in any other part of its dominions. This was not only neceſſary to that harmony, which ought ever to ſubſiſt between the State and its members, but to their ſubordination and obedience to its ſupreme authority.

But how different are the facts! By the firſt recited charter, James conſidered America, contrary to all law and equity, as his private patrimony; and concluded, that he had right, independent of his political truſts and relation to the State, to govern it by what laws and prerogatives he pleaſed. From this miſtaken idea, he eſtabliſhed within the dominions of the State, ten times more extenſive than Great Britain itſelf, an abſolute monarchy, conſtituting himſelf, and his heirs, the abſolute and perpetual monarchs. And in doing this, he totally diſregarded every law upon which the executive, as well

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as legiſlative rights, were conſtituted. He aſſumed to himſelf, and his heirs, a complete and independent legiſlative ſovereignty, and governed the people by ordinances made by himſelf; and thus, moſt effectually, excluded all the rights and powers of the King, Lords, and Commons, of the Britiſh State, over their own dominions. His executive councils reſembled more the inferior powers of an ariſtocracy, than thoſe over which he preſided, and by which he governed. By all which, he effaced every principle, every trace of that mixed polity, which is the great ſupport of the rights of Engliſhmen, and the eſſence of their government. But more: Altogether indifferent to the welfare and ſafety of the kingdom over which he rightfully preſided, in order to populate the country and ſtrengthen his arbitrary ſyſtem of government, he gave a general licence to Britiſh ſubjects to abandon their allegiance, and emigrate to his new dominions.

It would be more tedious than entertaining, were I to point out, in detail, all the miſchiefs which muſt have naturally flowed from this charter, had it continued in force, and

America been ſettled under it. I ſhall, therefore, only mention them in general. Long ere this time, the Americans, educated in the principles of monarchy, would have loſt all opinion of the excellence of the Britiſh Government, and all their reſpect and attachments would have been ſolely devoted to monarchy. Their laws, habits, manners, cuſtoms, and ideas of government, would have been diſſimilar, and *inimical* to thoſe of Great Britain. A monarchy, tempered by the principles of ariſtocracy and democracy, would have been as much an object of their averſion as of that of a Spaniard or a Turk. They would now only have had a reſpect for, and attachment to, a monarch reſiding in Britain, from whom they would have daily received their public benefits and protection, and to whoſe will and pleaſure they would have been conſequently devoted. They would have underſtood little, if any, of the happineſs and perfection of liberty enjoyed by Britiſh ſubjects, under a Britiſh Government.

Our Sovereign, to whoſe integrity and public virtue, if I may judge from the whole

tenor

tenor of his conduct, I firmly believe this monarchical power might be as ſafely intruſted as to any Sovereign in the world, would, at this moment, have poſſeſſed a diſtinct, independent, and abſolute dominion over three millions of people, the rightful ſubjects of the State, and over a tract of country annexed to, and a part of, the realm, many times larger than Great Britian itſelf. The revenues of that country would have been perfectly at his command. A ſeparate Exchequer from that of the State, and over which it could have no controul, would have been eſtabliſhed and filled with the treaſure ariſing from the commerce, and other reſources of a country, whoſe exports were, lately, nearly equal in value to thoſe of the foreign exports of Great Britain. To what uſes and purpoſes this abſolute and independent dominion might have been applied, in the hands of a Sovereign of leſs integrity, and leſs regardful of the fundamental laws of the State, and the liberties of his people, than his preſent Majeſty, I imagine need not be explained. Every man of ſenſe, but more eſpecially that reſtleſs oppoſition, who have been long inceſſantly exclaiming againſt the exerciſe

exerciſe of the eſtabliſhed and conſtitutional rights of the Crown, will readily perceive them.

By the three ſubſequent charters, James and Charles tranſgreſſed the bounds of their authority, in a degree as extravagant as in the firſt. For, if James inſtituted the principles of an independent monarchy in the firſt, he and his ſucceſſor eſtabliſhed in the others thoſe of perfect democracies; all of them equally ſubverſive of the mixed monarchy which their truſts obliged them to maintain. For, if the introduction of the principles of abſolute monarchy, within a part of the realm, would deſtroy the reſpect and attachments in the ſubject to a mixed form of government, and throw too much power into the ſcale of the monarch; it is evident to common ſenſe, that the eſtabliſhment of a number of democracies would have thrown as much influence into the hands of the people, deſtroyed that balance and check againſt their natural and licentious diſpoſitions, effaced all reſpect for, and attachment to, the mixed form of government, and, in the end, would have deſtroyed it.

It cannot be difficult to perceive, in the three laſt-mentioned charters, the dawn of that republican ſpirit which has ſo often diſturbed the pure ſtreams of a mixed monarchy, throughout all the parts of the empire, and been productive of ſo many national evils. The diſpoſition of James to convert the Britiſh Government into an abſolute monarchy, is evident from the firſt charter, as well as from a variety of his other public tranſactions. The inclination of Charles to effect the ſame deſign, is equally evident from many parts of his conduct. The ſubſequent charters could not, therefore, be the charters of the royal judgment. Yet we are not at a loſs, having the hiſtory of thoſe Princes before us, to account for acts ſo extraordinary, and ſo repugnant to their main deſign. Both of them intending to enfeeble, and perhaps to diſſolve, the ſecond and third orders of the State, could not procure the money neceſſary to the accompliſhment of their deſign, but by the prerogative. And this method being unlawful, and unpopular, it was oppoſed. It is not, therefore, an improbable conjecture, that theſe democratical charters were commodities purchaſed; that the laſt was bought, we have proof,

proof, as poſitive as the nature and antiquity of the tranſactions will admit of †. Beſides, theſe Princes had their moments of embarraſſments in which they were off their guard, and loſt ſight of their principal deſign. Art and influence might, at theſe times, get the better of their judgment. And we may perceive, not only from the hiſtory of thoſe Princes, but from their charters themſelves, an enthuſiaſm for colonization equal to that which produced the Croiſade. This enthuſiaſm, it is more than probable, added to the other motives I have mentioned, and to a hope that theſe charters would be always controulable, and liable to be ſuperſeded by the prerogative, led James and Charles to gratify the republican ſpirit of the perſons ſoliciting for them. Several attempts were made to reſume theſe charters, and at length Charles ſucceeded in the year 1684.

That Kings, poſſeſſed with high notions of abſolute power, ſhould, of their own mere motion, grant charters ſo inconſiſtent with them, is not to be ſuppoſed. Nor is it with-

† See Hutchinſon's Hiſtory of the Maſſachuſſets Bay, vol. ii. p. 1.

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in the confines of reaſonable conjecture, that men would accept of patents for carrying into execution an enterpriſe ſo hazardous, uncertain, and expenſive, as that of ſettling a colony, unleſs the powers and privileges conferred, had ſtrictly accorded with their own ideas and principles of civil government.

What thoſe principles were, we cannot be at a loſs to know, when we have recourſe to the hiſtory of the patentees of the laſt recited charter. They were chiefly men of republican principles, haters of monarchy, and perfectly attached to democratical government; ideas altogether unknown in Britain before the Reformation, and which were produced by the too rigid rules and reſtrictions eſtabliſhed by it, for the direction and government of the conſciences of men. Theſe rules produced a perſecution againſt thoſe who diſſented from the church eſtabliſhed, and that perſecution begat an averſion to the principles of the government which impoſed it. Beſides, the government which theſe Diſſenters, whether called Puritans, Independents, Separatiſts, or Preſbyterians, adopted for their reſpective churches, and made a part of their religion,

was

was altogether democratical, and excluded every principle of monarchy and ariſtocracy, knowing no temporal head but the people of their own churches. From all which, and a view of what has paſſed ſince the Reformation, we have documents which clearly prove, that theſe charters were founded in that republican ſpirit which aroſe in Britain, immediately after the Reformation, and produced the uſurpation of Cromwell; and which being checked and ſubdued by the tyranny and oppreſſion of that uſurper, made way for the Reſtoration; and I wiſh I could not, with equal truth, add, in that republican ſpirit, which, under the liberal principles of the preſent eſtabliſhed government, has been gradually nurſed, and imperceptibly gathering ſtrength, until it has produced a rebellion in America, created a diſaffection in the minds of too many Britons to their moſt excellent form of government, and threatens, unleſs reſtrained by proper laws, in much leſs time than that of half a century to deſtroy it.

Thoſe who will look back on what they have lately ſeen and felt, cannot want evi-

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dence to convince them of this truth. For although, upon a candid examination of the preſent ſtate of the Britiſh Government, the fundamental laws of the ſociety were never more ſtrictly, if ſo perfectly, adhered to and preſerved, yet ill-founded clamours againſt its adminiſtration ſubſiſt. Although the ſtreams of juſtice flow purely and unſullied, and every individual has his remedy for every right invaded, for every wrong ſuſtained, yet much reſtleſs diſcontent prevails. And although there is truly leſs real oppreſſion within the dominions of Britain, than in any other ſociety upon earth, yet we have ſeen that reſtleſs republican ſpirit unoppreſſed, and in the poſſeſſion of every bleſſing, forming in America ſeditious committees, conventions, and congreſſes, aboliſhing every ſyſtem of colonial government, and breaking out into open rebellion againſt the State to which they owe their exiſtence and happineſs; and in Britain, in ſtrict and uniform concert with America, we daily ſee it eſtabliſhing ſeditious aſſociations, with a profeſſed intent of making alterations in the Government, under the inſidious pretence of amending it, but truly, with a

ſecret

ſecret deſign to overturn the long eſtabliſhed conſtitution of our anceſtors.

Had the firſt Virginia charter continued in force to this day, how different would have been the language of the republicans from that which they have lately held in ſupport of the American democratical charters! We ſhould be told by them, that a ſociety, inſtituted on monarchical principles, within the territory of the State, was fundamentally ſubverſive of our mixed form of Government; that it tended to throw an undue weight into the hands of the Crown, and to enable it to deſtroy the ariſtocratical and democratical checks and balance eſſential in the Britiſh conſtitution; and that, therefore, no King could poſſeſs a power to eſtabliſh it, and conſequently it muſt be void. That this would have been their language, we may juſtly conclude from their inceſſant exertions to wreſt from the Crown, even many of its rightful and legal prerogatives.

But had the ſecond and third of theſe charters been continued in force, they could not in Britain have wanted advocates. Their demo-

democratical principles muſt have recommended them to the republican zealots of the preſent day. For, although they equally tend to deſtroy the monarchical and ariſtocratical orders of the State, and to ſubvert the foundations of the Britiſh Conſtitution, as in the other inſtance; and although the Crown, in the grants of them, has, to as dangerous a degree, exceeded the bounds of its authority; yet we have the ſtrongeſt evidence to induce us to believe, had an attempt been made by Parliament to reduce them to a conſiſtency with the State, that the republican faction would have been the zealous oppoſers of the amendment.

I do not aſſert this from a miſtaken concluſion. We have ſeen the ſame republican ſpirit, contrary to the fundamental principles of the ſociety of which they are members, and to whoſe State they have repeatedly ſworn allegiance, clamouring againſt, and reprobating that very amendment. When an act of Parliament was made to give the Crown the appointment of a Lieutenant Governor of the Maſſachuſetts Bay, and to take that appointment from the people, the whole faction roſe as one man, and united in the op-

poſition. Charters, however inconſiſtent with the fundamental laws of the State, however independent of its authority, and dangerous to its exiſtence, were now become acts ſo ſacred in their nature, that, like the laws of the Medes and Perſians, they were not to be altered or amended, even by the Parliament itſelf.

CHAP. VII.

Of the Charter of Maryland.

WE have ſeen, in the preceding chapter, the ſtrange inconſiſtency of the firſt American charters with the laws of the State, the rights of the Crown, and with each other. In proſecution of my deſign, I ſhall proceed to review thoſe which have been ſince granted, and were in force at the commencement of the preſent rebellion. The firſt in order of time is that to Cecilius, Lord Baron of Baltimore, in the year 1632, for the province of Maryland.

By this Charter, Charles the Firſt formed the territory into a principality, and created and conſtituted his Lordſhip, and his heirs, "the *true and abſolute* proprietaries of the "country." The title thus conferred, is ſo deſcriptive of ſovereign powers, that if they were not in the following clauſes of the charter more explicitly granted, they might be juſtly inferred from it. But the charter did

not confer the title only. It granted all the rights and powers which were ever exerciſed by, or can poſſibly be neceſſary to, a ſovereign State. The deſcription of thoſe rights and powers is ſo general and unlimited, and the eſtate or tenure granted in them ſo indefinite and abſolute, that they at once deſtroy the political relation which ought ever to ſubſiſt between the State and its members. Charles did not even reſerve to the Crown a ſingle prerogative, nor to the Parliament the leaſt right of ſupremacy. All the rights and powers of the Britiſh Government, as well thoſe which were poſſeſſed only in truſt by Charles, as thoſe which were held by the King, Lords, and Commons, independently of his executive authority, were transferred in alienable and abſolute inheritance.

In every civil ſociety, whatever be its form, there are, as I have before obſerved, certain principles peculiar to its ſtructure, which create the relation that all its different members muſt of neceſſity bear to the State. This relation is formed by, and conſiſts in the eſtabliſhment of a ſupreme authority over the members, and in their obedience to it. Theſe

Theſe qualities of ſupremacy and obedience form that cement of union which binds the members of every ſociety together, create their ſubordination and ſubjection, lead them to act in concert, on all occaſions, for the common weal, and conſtitute the ſtrength and harmony of the ſociety; and without them, we could never form an idea of Government. Should theſe relations between the ſovereign power and the ſubordinate members be univerſally diſſolved, the ſociety is no more; ſhould they partially, or in regard to a part of the members, be broken, the ſtrength of the ſociety muſt be diminiſhed in proportion.

The ſame property cannot be poſſeſſed in abſolute right by two different perſons, nor can the ſame ſpecific powers of Government rightfully exiſt in two different politic bodies of the ſame ſociety. Every abſolute right implies the abſolute uſe and exerciſe of it; and therefore, whatever were the powers and privileges which Charles granted to Lord Baltimore, and his heirs, he deprived himſelf and his ſucceſſors for ever of the uſe and exerciſe of, and of all right of interference in, them. Let us then enquire what were the executive rights and preroga-

tives granted by the words of the Charter of Maryland, in abſolute right and tenure.

His Lordſhip and his heirs are empowered " to appoint and eſtabliſh any Judges, " Juſtices, Magiſtrates, and officers *whatſoever*, by *ſea* and *land*, for *what cauſes ſoever*, and with *what power ſoever*, and " *in ſuch form* as to them ſhall ſeem moſt " convenient. To do all and every thing, " or things, which, unto the complete eſtabliſhment of juſtice, unto courts, prætories, " and tribunals, forms of judicature, and " manners of proceedings do belong."—They were conſtituted Captain-Generals, with all the powers of war and peace, and to declare martial law. They were authoriſed " to confer favours, rewards, and honours, upon " the inhabitants, and to inveſt them with " *what titles and dignities ſoever*, ſo as that " they ſhould not be ſuch as are *uſed in England*;"—and " to incorporate towns into " boroughs, and boroughs into cities, with " ſuch convenient immunities and privileges as to them ſhould ſeem meet;"—to conſtitute " ports with ſuch rights, juriſdictions, and privileges, as to them ſhould " ſeem

" ſeem expedient; and to have and enjoy for
" ever the cuſtoms and ſubſidies in the ſaid
" ports."

Such are the rights and prerogatives of the executive authority of the State granted by this charter. Were there no other objections to the legality of them, than the unlimited and indefeazable eſtate in which they are granted, this alone would certainly, upon every principle of politic law, render them void. But, independent of this, the following reaſons, founded in the fundamental laws of the Britiſh State, may be juſtly urged againſt their validity.

1. The King, by the original decrees of the ſociety, is conſtituted the ſupreme Magiſtrate, bound to ſuperintend the adminiſtration of juſtice, and the preſervation of the public peace. For that reaſon, he is impowered to judge of the abilities and integrity of the perſons proper to execute truſts ſo important to the rights and harmony of the ſociety. He cannot, therefore, conſiſtently with the nature of his truſt, give up his right of ſuperintending the appointment of judges and conſerva-

tors of the peace, much leſs can he transfer it to another for ever; for this would be to give up his right of judgment in a matter which the conſtitution has intruſted ſolely to him, to weaken his neceſſary weight and influence in the ſociety, and to deprive himſelf of the power of ſuperintending its public peace. Should a King, by his patent, delegate a power to another of appointing the Judges of the King's Bench, Common Pleas, and of the Juſtices of the Peace within Great Britain, can it be a doubt but that the grant would be illegal, miſchievous and void?

2. The King, by the prerogative, is impowered to conſtitute all the ſubordinate offices neceſſary to the adminiſtration of juſtice, and the preſervation of the peace; but in diſcharging this part of his truſt, as in every other, he is bound to obſerve the fundamental and general laws of the ſociety, and to appoint thoſe offices in the manner and form by them preſcribed. He cannot, therefore, conſtitute them with powers and rights variant from thoſe laws; much leſs can he, as he has done in this charter, grant an unlimited and indefinite power to another, and his heirs for

ever, to conſtitute them, " *for what cauſes* " *ſoever*, with *what powers ſoever*, and in " *ſuch form*, as to him or them ſhall ſeem " moſt convenient;" becauſe, under powers ſo extenſive, all the ſubordinate offices in the ſociety might be eſtabliſhed on principles repugnant to the ſpirit and policy of the government; and the uniformity of its inferior orders, which greatly contribute to the ſtrength and ſupport of the State, might be broken.

3. The King is veſted with that power from whence the ſociety has a right to expect protection and ſecurity. To enable him to ſecure that protection, he holds the fœderative rights, and all the powers of war and peace; the appointment and ſupreme command of the military force of the nation; the cuſtody and care of all caſtles, fortifications, and other places of ſtrength. Were he authoriſed to grant theſe rights to another, he might deprive himſelf and his ſucceſſors of their ſuperintending power and charge over the ſociety, in a point moſt eſſential to its ſafety and exiſtence.

4. The

4. The King is the fountain of honour; and as he ſuperintends the puniſhment of the wicked, ſo he is the ſupreme judge appointed to reward the virtuous and the brave. He may, therefore, confer titles of nobility on whom he may think deſerving; but the grant muſt be made, in mode and ſubſtance, conformable to the eſtabliſhed rules and fundamental laws of the ſociety. He cannot, therefore, confer titles and dignities unknown to thoſe laws; and much leſs can he grant a power to another, in fee, to confer them, with an expreſs prohibitory proviſo, that they ſhall "not be ſuch as are uſed in England."

5. The King may, by virtue of his prerogative, conſtitute inferior ſocieties, ſuch as towns, boroughs, and cities, &c. with rights, juriſdictions, and privileges, correſponding with the ſtructure of the principal government and its fundamental laws, preſerving their due relation to the other members, and their ſubordination to the ſupreme authority of the State; but he cannot conſtitute them with independent rights, powers, and juriſdictions, becauſe this would diſſolve their relation and connection with the ſociety, and render

render them independent States: And much leſs could he transfer to Lord Baltimore, and his heirs for ever, an indefinite power to conſtitute them with ſuch rights, juriſdictions, liberties, and privileges, " as to them ſhould " ſeem convenient."

6. The prerogatives of the Crown are rights veſted in the perſon of the King, *in truſt*, to exerciſe them himſelf, and to leave them unimpaired to the exerciſe and uſe of his ſucceſſors, for the public good and ſafety; he cannot, therefore, transfer them either *for life*, *in tail*, *or in fee*; becauſe, in the firſt caſe, he deprives himſelf of the power to diſcharge his truſt and duty to the ſociety, and in the others, he robs his ſucceſſors of moſt important rights veſted in them by the conſtitution, for the public good and ſafety; and becauſe, if he might do this, he might alter the ſucceſſion of the Crown, and give to the people what King he pleaſed. And yet Charles, by the expreſs words of this charter, has conveyed an abſolute eſtate in all the civil, military, and fœderative rights of the Crown, to the proprietary of Maryland, and his heirs. So that, ſuppoſing the charter to be valid in law,

law, he has deprived his ſucceſſors for ever of their right to exerciſe the prerogatives of the Crown, and of interfering, in any reſpect, in the government of Maryland, though a part of their dominions.

Many other objections may be juſtly made to this part of the charter, but theſe are ſo ſtrong and important as to render the mention of others unneceſſary; we will therefore paſs to a view of the legiſlative powers. And here we ought not to be ſurpriſed, that Charles, who did not heſitate to alien *for ever* thoſe rights which were neceſſary to his own dignity and power, ſhould, with leſs regret, transfer thoſe of the Parliament, which he was endeavouring to weaken, if not to deſtroy, in the ſame independent and unlimited tenure. The words of this illegal and extravagant grant are, "We, repoſing "ſpecial truſt, &c. in the ſaid now Lord "Baltimore, for *us*, *our heirs*, and *ſucceſſors*, "do grant FREE, FULL, and ABSOLUTE "POWER, by virtue of theſe preſents, to *him* "and *his heirs*, for the good and happy go-"vernment of the ſaid country, to ordain, "make, enact, and under his and their ſeals

"to

" to publiſh, *any laws whatſoever*, appertain-
" ing either to the *public ſtate* of the ſaid pro-
" vince, or unto the utility of particular per-
" ſons, *according to their beſt diſcretions*, by
" and with the advice, aſſent, and approba-
" tion, of the freemen of the ſaid province,
" or the greater part of them, or of their de-
" legates, or deputies, whom, for the enact-
" ing the ſaid laws, we will, that the ſaid
" now Lord Baltimore, and his heirs, ſhall
" aſſemble *in ſuch ſort and form* as to him and
" them *ſhall ſeem beſt*, and the ſaid laws duly
" *to execute* upon all people within the ſaid
" province and limits thereof, by impoſition
" of penalties, impriſonment, or any other
" puniſhment, yea, by taking away *members*
" *or life*."

No truth can be more firmly eſtabliſhed by the practice of mankind, and the nature and fitneſs of things, than that there muſt of neceſſity be, in every civil ſociety, one ſupreme will or ſovereign power; a power having a right to command and direct the actions of every member to whatever is capable of human direction, and relates to the public intereſt, ſafety, and happineſs. It is

from

from this univerſal power of directing and commanding, that the union of the wills and ſtrength of all the members ariſes, and the "body politic or ſtate reſults." The members cannot poſſeſs an abſolute and independent right to regulate or direct their own conduct, in matters where the public good is concerned, becauſe their dependence on the ſupreme authority for what relates to their ſafety and happineſs, conſtitutes their memberſhip, and unites them with the ſociety. This ſupremacy in the ſtate, and dependence in the members, are ſo eſſential, that without them "we could never conceive a civil ſociety." For, if it could be lawful for the members of a ſociety to direct their own actions, independently of the ſovereign will, and at their pleaſure to diſobey and oppoſe it, every one would follow its own judgment in whatever relates to the public welfare. The cement which binds the ſociety together would be diſſolved, endleſs competition and conteſts for power would enſue, with all the miſchiefs incident to a ſtate of nature.

A neceſſary conſequence of this ſupremacy is, that all the members muſt bear a proper relation

relation and ſubordination to the State, and a perfect ſubjection to its will. By their relation and ſubordination I mean, that their rights and powers muſt be founded in principles which correſpond with thoſe of the State, and not in ſuch as are diſſonant and heterogeneous. For, without this, the communications of the ſupreme authority could be neither regularly made or received, by its members, nor the power of the one be executed, nor the duties of the other fulfilled.

All theſe fundamental and well eſtabliſhed truths, Charles, in the conſtitution of the province of Maryland, totally diſregarded. Inſtead of aſcertaining the form of this inferior politic member, and founding it on principles which agreed with thoſe of the State, and its ſubordination, its form and powers are totally undefined; and the Lord proprietary, and his heirs, are authoriſed to eſtabliſh it "in ſuch form and "ſort as to them ſhall ſeem beſt." Under this unlimited authority, his Lordſhip might have eſtabliſhed it on principles entirely ariſtocratical, or, as has been done in the eaſtern Colonies, to the inconceivable detri-

ment of the Empire, on principles purely democratical: and he wanted nothing but the aſſent of the people to make it abſolutely monarchical.

In every Government whoſe rights are ſettled, and even in the Britiſh (whoſe principles, before the Revolution, were fluctuating), we find the powers and privileges of all the inferior politic bodies reſtrained ſo to the particular objects of their inſtitutions, as to render the powers and interference of the ſupreme legiſlature perpetually neceſſary to their intereſt, ſafety, and happineſs, ever having ſomething to aſk of, and to receive from it, to which they are incompetent. Their powers do not, ought not, and cannot, extend to objects of general police and regulation, while they remain ſubordinate members of the ſociety, and ſubject to its legiſlature: Becauſe their ſubjection conſiſts in this dependence on it; and becauſe, if they were not thus reſtrained, but made competent to the making all manner of laws, their legiſlative acts would ever interfere with thoſe of the ſupreme authority, weaken its

powers,

powers, and produce the utmoſt anarchy and confuſion.

Now the powers of legiſlation, granted to the Lord Proprietary and his heirs, were as extenſive as language could make them. They are in their tenure unlimited, and in their nature "free, full, and abſolute." Nothing is wanting that can be neceſſary to an independent ſovereignty. They extend to the regulation and direction of whatever "appertains to the private utility of indivi-"duals," or "to the public ſtate of the pro-"vince, and to the good and happy govern-"ment of the country." Thus the people of Maryland are left, by the expreſs words of their grant, under a neceſſity of looking up to Parliament for, or aſking of it, no one act, matter, or thing, which can be neceſſary either to their internal peace and happineſs, or to their protection againſt a foreign enemy, as ſoon as their opulence and population ſhall enable them to protect themſelves.

Where then ſhall we find that ſubordination, or thoſe political ties which ought to

the politic body of Maryland to that of the State, ſo as to enable us to call it, with any degree of propriety, a member or part of the ſame ſociety? They are not to be found in the conſtitution of the legiſlative powers, for theſe are indefinite, abſolute, and independent: Nor in that of the executive powers, for the Proprietary poſſeſſes them in abſolute right and property, and can be no more accountable to the Crown for the uſe and exerciſe of them than he is for the money in his purſe. Shall we look for them in the eſtabliſhments of the inferior orders, boards, or offices, whether judicial or miniſterial, eccleſiaſtical, civil, or military? They are not there; for theſe are the creatures of a Prince, who, under the powers granted, is independent, and to whom all the members owe faith and allegiance. Shall we find them in the allegiance of the people to the Crown, or in their obedience to the laws of Parliament? We ſhall not. For if that allegiance is not expreſsly, it is virtually and moſt effectually, diſſolved. For, by a transfer of the "abſolute powers" to make "all manner of laws, for the good and "happy government of a country," and to

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compel the obedience and ſubmiſſion of the people to them, their allegiance was as effectually transferred as if it had been done in terms ever ſo explicit; it being impoſſible, in the nature of things, for a people to yield obedience to two diſtinct and complete legiſlative powers, whoſe laws muſt be ever variant from, and often repugnant to, each other.

Having thus before us thoſe independent rights which exclude all political relation and ſubordination of the Proprietaries and people of Maryland to the State, it will be neceſſary to enquire, whether there are any, and what reſtrictions or reſervations in the charter, of a contrary tendency. There is, in the clauſe which conſtitutes Lord Baltimore and his heirs "the Lords and abſolute Proprietaries "of the country," a "ſaving of the faith "and allegiance, and ſovereign dominion, "due to us, our heirs and ſucceſſors." But Charles did not conſider, that "no man can "ſerve two maſters;" that the people of Maryland could not be his ſubjects, and at the ſame time the ſubjects of a Prince in whom he had veſted all thoſe complete powers

to which ſubjection is due. Had the inferior ſociety been formed on the principles of the Britiſh Government, with its proper relation to the State; had a juſt and reaſonable ſubordination and ſubjection of the body politic of Maryland to the legiſlative and executive powers of the Britiſh ſociety, agreeably to its fundamental laws, been eſtabliſhed, this ſaving would have been unneceſſary. The faith and allegiance due to the Crown, and their obedience to the laws of the State, would have been ſecured by the ſame political bonds, and conſequently as effectually in the province as in the kingdom. But the reverſe being the fact; and all the powers granted having a manifeſt tendency to diſſolve that "allegiance and do- "minion," the ſaving was nugatory, ineffectual, contradictory, and abſurd.

There is alſo another proviſion, that the "laws" of Maryland "be conſonant to rea- "ſon, and be not repugnant or contrary, but "as near, as conveniently may be, to the "laws, ſtatutes, and rights, of this our "kingdom of England." Now let us ſuppoſe, that Lord Baltimore had eſtabliſhed a mixed form of government, the exact reſemblance

ſemblance of the Britiſh State, and had conformed, in all his laws, to the ſpirit of the laws of England; what would this have contributed towards the ſubordination of the country, or its political relation to, or union with, the Britiſh Government? The anſwer is, Nothing. Great Britain and Maryland would, in that caſe, have been two diſtinct, though ſimilar independent ſocieties, governed by two diſtinct heads, and yielding obedience to laws made by two different ſupreme powers, and nothing more. We may therefore conclude, that this proviſion, like the laſt I have mentioned, is ineffectual and abſurd.

But when it is conſidered, that the Lords Proprietaries are laid under no obligation to return authentic copies of the laws made by the Maryland legiſlature, nor obliged to give any account of their proceedings either in their legiſlative or executive capacities; that there was no reſervation to the Crown of a power of confirmation or repeal of the laws that ſhould be made, ſhould the Proprietaries condeſcend to tranſmit them; and that there was no right to hear and de-

termine appeals from the judicial deciſions in the plantation; the proviſion under our conſideration appears yet more nugatory and ridiculous. For, let us ſuppoſe, that a law was made by the Britiſh Parliament, to regulate ſome particular matter in Maryland, or even to repeal one of their provincial laws, becauſe contrary to the laws and rights of the State, and that the Proprietaries and people ſhould combine to diſobey it. By what means could the Crown, or its ſervants, carry ſuch a law into execution? Should they apply to the Proprietary, he is averſe to the meaſure, and they have no coercive power over him. Should they apply to his executive officers, they are his creatures and dependents; their oaths of fidelity and allegiance are taken to him, and not to the Crown. They are ſworn to execute the laws of Maryland, not thoſe of England; and their intereſt and obligations unite in diſobeying the order.

Indeed, among the many laws which have been made to bind the Colonies, none that have not agreed with the local intereſts of the Proprietary and people have been obeyed. The laws of trade have been moſt ſhamefully violated

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and diſregarded, in the Proprietary and Charter Governments. A law has been made to prohibit the making of ſteel, &c. the erecting of tilting hammers, and ſlitting mills. Yet there have been many ſteel furnaces, tilting hammers, and ſlitting mills, erected ſince the paſſing of the act. A law has been made to regulate the manufacture of hats, but it has not been obeyed. Individuals are intereſted in the diſobedience, and the Proprietaries will not interfere to enforce an act where neither their own rights nor their intereſt are concerned, and more eſpecially, where it is made to interfere with their power, however neceſſary the law may be to the manufactures or commerce of Great Britain.

There is one more reſtraint on the legiſlative and executive power of the Proprietaries. They are authoriſed, as I have ſhewn, to conſtitute an order of nobility, and "to in-"veſt them with what titles and dignities ſo-"ever, *ſo as they be not ſuch as are now uſed* "*in England.*" What the policy of this proviſion was, muſt reſt in conjecture. Did it ariſe from a diſlike in Charles to the ariſtocratical order of the Britiſh State, which had

been, and was at the time of the grant, oppoſing his arbitrary meaſures; and did he intend to prevent the eſtabliſhment of that order in America, whoſe rights he intended to enfeeble, if not to deſtroy, in Britain? This conjecture does not ſeem void of probability, when we recollect, that he had conferred all the powers of legiſlation on a monarchical and a democratical order, to the excluſion of the ariſtocratical. Hence, it would ſeem, that, although he was willing that there ſhould be a provincial nobility, he did not chuſe it ſhould be legiſlative, or bear any reſemblance to that of the Britiſh State. However this may be, it is certain, that this reſtraint on the Proprietary power did not tend to unite the policy nor the manners of the inferior ſociety to thoſe of the kingdom, but rather, if it had been poſſible, to make the diſunion more complete.

To point out, in detail, the miſchievous effects of this illegal and unconſtitutional Charter, would be more diſguſting than entertaining, and is not neceſſary to my deſign. It will ſuffice, generally, to mention them. Under ſuch a Charter, we are not to be ſurpriſed

priſed at finding the powers of Government, in the feeble hands of a ſubject, improperly and injudiciouſly managed. The rights granted were ſo extenſive, that they were calculated to alienate the Proprietaries from their attachment and ſubjection to the State, to lead them to devote thoſe rights to the increaſe of their private intereſt, and to fill their minds with purpoſes of ambition. No lines, no principles, are laid down, nor any ſuperior influence eſtabliſhed, by which that ambition could be checked or controuled. They were conſtituted officers of a Government independent of its power, and unaccountable to it. Their only connection, or political relation, was with the people of the province. With theſe they were obliged by the charter to divide the legiſlative rights; but without any intermediate weight or balance to check either their own ambition, or the licentious deſires of the people they were to govern.

Thus, left to themſelves, diſcord and confuſion naturally enſued in their legiſlative conduct. Perpetual conteſts for power ſucceeded. A variety of laws was propoſed in turn, by the Proprietary, to the conventions of the people, and by them to the Proprietary, and

and alternately rejected, before any ſyſtem of government could be eſtabliſhed. The firſt which had any appearance of being ſettled, was a ſtrange jumble of the monarchical and democratical principles, in which the latter were perfectly predominant. A number of perſons elected by the people, others ſummoned by ſpecial writs of the Proprietary, and all thoſe who did not chuſe to vote at the elections, with the Proprietary or his Deputy, and his ſecretary, ſitting and voting in one houſe, formed the firſt legiſlative authority of Maryland. This wretched ſyſtem, after ſome experience of its abſurdity and miſchiefs, was ſucceeded by another, which conſiſted of a Governor, an Upper Houſe, dependent, in form, on the Proprietaries, but in reality more on the people, and a houſe formed by the repreſentatives of the people. Under this defective ſyſtem the province has continued ever ſince, until the ſyſtem itſelf became a ſuicide.

But neither under the firſt or the ſecond ſyſtem of government have any of the duties to the State been obſerved, nor have the people enjoyed that peace, protection, and ſafety,

for which men enter into a ſtate of civil ſociety, and for which they give up their natural rights and independence; and much leſs have they poſſeſſed that ſecurity and happineſs which they muſt have enjoyed in a province duly ſubordinate to the moſt perfect ſyſtem of policy upon earth. The hiſtory of this province is a hiſtory of a total diſregard to the rights of the Crown and the State, of wars with the natives, and of inſurrections and rebellions againſt the Proprietary authority; rebellions, which have been ſuppreſſed more by the imaginary power of the Crown, and a remaining attachment to the mixed monarchy in the people, than either by the fidelity of the Proprietaries as ſubjects, or by their judgment in governing, or by their weight and influence in the province.

But, notwithſtanding this imaginary power of the Crown, and this real attachment to the principles of the Parent State in many of the people, theſe perpetual conteſts for power, between them and the Proprietaries, have ever tended to enfeeble, and in the end have deſtroyed, the peace, good order, and government, of this inferior ſociety. Self-intereſt

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and ambition are paſſions natural to the hearts of men. When poſſeſſed of the means of gratification, they know no bounds. The moral, as well as political obligations generally fall before them. The Proprietaries, by this Charter, became poſſeſſed of the means by which they thought they could gratify both. A large extent of territory, and the powers of independent government, were thoſe means. Proprietary inſtructions, founded in their private intereſt, and their ambitious deſigns, without the leaſt regard to the rights of the Crown or Parliament, or to the intereſt of the province, are digeſted in England, and ſent over to their Governors. Their Governors, bound by heavy penalties, are obliged to make them the rule of their government. Under their injunctions, many arbitrary and unjuſt claims are often made on the people, and many reaſonable acts, neceſſary to the welfare of the province, have been refuſed. This has produced diſguſt, diſreſpect, and contempt, in the people for Proprietary dominion.

On the other hand, the people are naturally proud and licentious, and yield with reluctance

luctance to the government of a ſubject claiming independent rights. They cannot bring themſelves to fear and reſpect him, while they retain the idea of a Sovereign to whom that fear and reſpect is only due. Hence they are led to oppoſe his conduct when unjuſt and arbitrary, and ſometimes when not ſo, and often in their turn to invade the Proprietary rights and prerogatives. In theſe conteſts for power, the Proprietaries ſometimes prevail in laying a foundation for oppreſſing the people, and at other times the people ſucceed in wreſting from the Proprietaries thoſe rights which are neceſſary to ſupport their own power. From theſe ſources have ariſen thoſe perpetual controverſies between the Proprietaries, their Governors, and their Aſſemblies: controverſies which lead the people into cabals, deſtroy the public order, enfeeble the powers of Government, and which have ever proved ſo prejudicial to the ſervice of the Crown, even when the objects of that ſervice were the protection and ſafety of the province againſt its foreign enemies *.

But,

* I ſhall content myſelf with giving one inſtance of the miſchievous conſequences of theſe diſſentions, waving many

But, although the Proprietaries and people are at perpetual variance reſpecting their own powers, yet they ſeldom fail to unite in op-

many others, becauſe, if this does not ſatisfy my reader, I ſuſpect nothing can.

In the laſt war, the Colonies implored the protection of the State againſt the French and Indian invaſions. They acknowledged themſelves incapable, from their diſunion, to repel them. A powerful fleet and army, at a great expence to the nation, were diſpatched to their aſſiſtance. Requiſitions paſſed from the Crown to the ſeveral Colonies, for their juſt proportion of aids in their own defence, with a parliamentary engagement, that a generous retribution ſhould be made for their liberal exertions. One would imagine, from theſe facts, that a province, whoſe danger was ſo imminent, would ſuffer no intereſt, no views of ambition, to obſtruct its public duty; that the Proprietary and his Aſſembly would lay aſide their political diſputes, and unite in the common defence. But the fact was the reverſe. Theſe juſt and reaſonable requiſitions furniſhed them with new ſubjects of controverſy. Relying on the exertions of the Mother Country, and the other Colonies, their proportion of aids was not granted. And this opulent province, during the whole war, was ſaved from its ravages, and in the end from the mediated conqueſt, at the expence of the blood and treaſure of Great Britain and the other Colonies. This conduct was certainly inconſiſtent with that equity and juſtice which ought to characteriſe the policy of every civil ſociety, and in itſelf ſufficient to diſfranchiſe any inferior order of it. For, if that inferior order, in times of ſuch danger, can neither protect itſelf, nor unite, when called upon, with its fellow-members, in the general protection; it certainly is erroneouſly conſtituted, and ought to be made more competent to the diſcharge of its duty to the ſociety, and to itſelf.

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poſing thoſe of the Crown and Parliament. They conſider theſe rights as interfering with their own power, and repugnant to their local intereſt; the inſtructions from the Crown, and even the laws of Parliament, as not binding on them, becauſe their allegiance is due to the Proprietaries, and not to the King, and their officers are ſworn to obey their own laws, not thoſe of the Parliament. Inſtances may be produced of the Proprietary himſelf openly oppoſing the laws of trade, and preventing the officers of the cuſtoms from carrying them into execution, becauſe he conſidered them as reſtraints upon the trade of his province.

There are few general laws made for the public ſafety, or any other general benefit, which will ſuit the different and local intereſts and views of all the members of a ſociety. Some will be affected by one law, and ſome by another; and perhaps, on the whole, the ſacrifice made to the public ſafety will be nearly equal in all; while the benefits received ever largely compenſate for the injury ſuſtained. It is therefore a maxim, founded in the nature

of

of civil ſociety, that the private intereſt of the Members muſt ever give way to the public good. Now the laws of trade are the very laws I have deſcribed. On them, the numbers of our ſeamen, the quantity of our ſhipping, the commerce of the nation, and its naval ſtrength, depend. And yet theſe laws, ſo important to the common ſafety, and even of the Colonies themſelves, with every other, which affect the intereſt and views of only a few of the Provincials, have ever been diſregarded. Diſobedience to laws ſo neceſſary to the public ſafety, continued upwards of a century, naturally led to a total denial of the rights of the Crown, and of the authority of Parliament.

From the preceding obſervations, it is eaſy to perceive how weak and incompetent to the purpoſes of Government, ſuch unlimited powers muſt be in the hands of a ſubject, who, ſhielding himſelf and his property under the general protection of the ſociety, is left to purſue the ſiniſter deſigns of his own intereſt and ambition. But, upon a view of the relaxed and enfeebled ſtate of the Proprietary

prietary powers in the province of Pennſylvania, as well as in Maryland, long before, and at the time, the preſent rebellion broke out; this truth will be fully confirmed. The frequent attempts of the Proprietaries to oppreſs the ſubject, in ſome of which they were ſucceſsful, in others not, added to their continual diſputes with their Aſſemblies, had rendered their Government weak and contemptible in the eyes of the people. The adminiſtration of juſtice was totally relaxed. The laws for the preſervation of the public peace were a dead letter. Their officers were without power, influence, or reſpect. In the time of the Stamp-Act, ſmall and inſignificant mobs, incited by a few ſeditious men, and which might have been eaſily ſuppreſſed by a ſmall exertion of power, roſe in oppoſition to it, without a ſingle ſtep taken to ſuppreſs or check them. Encouraged by this precedent, the ſame ſeditious men reſolved to throw off all dependence on the Britiſh State. Trifling mobs were, at firſt, incited as before. Theſe mobs produced illegal and ſeditious Committees; the Committees, treaſonable Conventions and Congreſſes, until, at length, that ſpirit of licentiouſneſs and revolt, which

had been ſo long nurſed and matured under the unjuſt and unconſtitutional rule of Proprietary power, broke out into open rebellion, which at once deſtroyed the Government of the province, and its ideal ſubordination to the State itſelf.

CHAP. VIII.

Of the Charter of Pennſylvania.

FROM Maryland, we will ſtep over the line, and take a view of the Charter of Pennſylvania. For, although it is not next in order of time, yet, as there is ſo much ſimilarity in the powers granted by them, that the reader will find but few remarks made on one which will not apply to the other, it cannot be improper. Indeed, we may ſafely conclude, that the ſcribe who made the draught of the laſt, muſt have had the firſt before him, as, in many inſtances, the rights and powers granted are deſcribed in the ſame words.

This Charter was granted by Charles the Second, in the year 1681-2, to William Penn, Eſq; ſon of Sir William Penn. In conſtituting this inferior ſociety, no regard was paid to the fundamental laws and principles peculiar and eſſential to the Britiſh Government. The royal pleaſure, and the

humour and intereſt of the patentee, appear to be the only rules by which its rights and powers were adjuſted and ſettled. Indeed, it is hard to determine, upon a view of them, whether Charles ſported moſt with the authority of Parliament, or with the rights and prerogatives of the Crown,—with thoſe rights which he held in truſt for the benefit of his people, and for his ſucceſſors, or with thoſe which belonged to others, and over which he had not the leaſt authority.

The Patent conveyed a tract of territory nearly as large as the kingdom of England, which was erected into a Seigniory. "Mr. "Penn, his *heirs* and *aſſigns*, were made and "ordained the *true and abſolute Proprietaries*" of it.

The legiſlative rights granted to "Mr. "Penn and *his heirs*, and to *his and their* "*deputies*," were "*free*, *full*, and *abſolute* "*power*, for the *good and happy government* "of the country; to ordain, make, enact, "and publiſh *any laws whatſoever*, for the "*raiſing of money* for the public uſes of the "province, or for any *other end*, appertain-

"ing

" ing to the public *ſtate*, *peace*, *and ſafety*, *of*
" *the country*, or unto the *private utility* of
" particular perſons, *according to their beſt*
" *diſcretion*, by and with the advice, aſſent,
" and approbation, of the freemen of the
" country, or of their delegates and deputies,
" to be aſſembled *in ſuch ſort* and *form* as to
" him or them ſhould ſeem beſt."

No words could have been deviſed more proper to enable Mr. Penn and his heirs to conſtitute an independent ſovereignty, than thoſe I have juſt cited; none more proper to diſcharge them and the people from every degree of ſubordination and obedience to the State. Inſtead of incorporating the province into a body politic, giving to it that form, and thoſe limited powers, which were neceſſary to its juſt relation and a conſtitutional ſubordination to the State; Charles conferred on a *ſubject and his heirs*, an " abſolute" right to judge of its form, and to eſtabliſh it on ſuch principles as beſt ſuited their *private intereſt and ambition*. Nor were they under the leaſt reſtraint in reſpect to the powers upon which they might eſtabliſh it. On the

contrary, ſpecial care ſeems to have been taken, that it ſhould be both in name and fact independent of the Britiſh Government. For it appears evident, from the words I have cited, that whatever legiſlative rights and powers can be neceſſary to the private utility of individuals, to the internal order and peace of a civil ſociety, to the raiſing money for the ſupport of Government, or to the levying of aids for the defence of a country, were conferred by the Charter. So that, neither the Proprietaries, nor the people, could ever have the leaſt neceſſity or occaſion to aſk of, or receive from, the Parliament, any act or thing beneficial or neceſſary to their ſafety or happineſs. All thoſe never-ceaſing benefits, and that continual protection to obtain which men enter into civil ſociety, and which form the political cement that binds the inferior orders and members of the politic body to its ſupreme head, were, in future, to flow from an independent Government eſtabliſhed by themſelves.

The ſuperintendence of Parliament being thus rendered uſeleſs to the province, it became more eſpecially neceſſary, in order to create

create ſome ſmall degree of ſubordination in its legiſlative powers, and to preſerve a conſiſtency in its laws with thoſe of the State, that the Crown ſhould poſſeſs a right to approve or reject its legiſlative acts, before they ſhould aſſume the validity of laws. By this means, a kind of ſubordination to the Crown, though not to the Parliament, might, with proper attention, have been preſerved. The ambition and private intereſts of the Proprietaries, and the licentious attempts of the people, might have been guarded againſt. But, inſtead of reſerving a right in the King to appoint a Governor, accountable to him for his conduct, who ſhould judge of the conſiſtency or repugnancy of the provincial acts to thoſe of the principal ſociety; Mr. Penn and his heirs are appointed the hereditary Governors, with the ſole and abſolute right of appointing Deputies, who are finally to enact the laws, and of every other Officer, to carry them into execution. And that theſe laws ſhould ever remain ſubject to no controul, it is, by a ſubſequent clauſe, declared, that they "ſhall be moſt abſolute and available in "law;" and "the liege people and ſubjects "of the State" are enjoined to obſerve and

keep the ſame inviolably, " under the pain " therein expreſſed."

Here then, not only " one abſolute and " independent right with regard to *ſome par-* " *ticular affairs*," is granted (as in the caſe I have cited from the learned Puffendorff), but *every* " abſolute independent right with re- " gard to *every* affair" which concerns either the internal order and peace, or the external defence of the province; and that too as fully as they are held by the King, Lords, and Commons, over the dominions of the State. Were there no other objections to this charter, this is ſo important to the peace and ſafety of the State, that we may ſafely affirm, with the author I have juſt mentioned, that Charles the Second, in this inſtance, " plainly abdicated his authori- " ty," and by admitting two heads in the conſtitution, he eſtabliſhed *a ſtate within a ſtate*, and rendered it *irregular* and MONSTROUS; and with the judicious Burlamaqui, that this act being directly repugnant to the fundamental laws of the Britiſh conſtitution, which Charles was bound to ſupport, was a

dangerous violation of his truſt, " null and " void †."

Although we have not, as yet, before us, all the American Charters, yet it may not be improper here to remark, that this objection will apply, with equal force, to all of them, whether Proprietary or popular. The legiſlative, executive, and even the fœderative rights and powers, granted by them, are equally indefinite and independent of the Britiſh Government. They are ſo many miſchievous and dangerous innovations, becauſe they are not founded in precedents, and are in direct oppoſition to that polity upon which the conſtitution of our mixed monarchy is eſtabliſhed. All the charters which

† This excellent writer further adds, " This is inconteſti- " bly proved by the very nature of ſovereignty, which is " no more than the right of determining *finally* in ſociety, " and which, conſequently, ſuffers nothing, not only *above* " *it*, but even, that is *not ſubject to it*, and embraces, in the " extent of its juriſdictions, every thing that can intereſt the " happineſs of the State both ſacred and profane.

" The name of ſovereignty cannot permit *any thing that* " *is ſubject to human direction, to be withdrawn from its au-* " *thority*; for what is withdrawn from the authority of the " Sovereign, muſt either be left independent, or ſubjected " to the authority of ſome other perſon different from the " Sovereign himſelf."

preceded

preceded them, and all which have been ſince granted, have limited and reſtrained the grantees to the making of bye-laws and ordinances, ſubject always to the controul and repeal of Parliament; the grant of the Iſle of Man excepted; and this grant, from its unlimited and independent rights, has been found ſo inconſiſtent with the public weal (though by no means ſo deſtructive of the peace and ſafety of the empire, as the American charters), as to be reſumed for that reaſon by the Crown.

Having before us the legiſlative power of Pennſylvania, it will be neceſſary to conſider what were the proviſional reſtrictions impoſed by the charter on it. There is a proviſo relative to the making of laws, in the words of the charter of Maryland, that the laws to be made ſhall be "conſonant to reaſon, and not "repugnant or contrary to the laws, ſtatutes, "and rights, of the kingdom of England." On this proviſion I ſhall not repeat my obſervations, but refer to thoſe made on the ſame article in the Maryland charter. But I will take the liberty to remark that, although this charter prohibits a repugnancy and diſagreement

ment in the provincial laws with thoſe of the State, yet we find in it a ſubſequent clauſe of a contrary and moſt extraordinary nature. It not only places the legiſlature of the inferior ſociety on a par of independence with the Britiſh legiſlature, but renders the laſt in a manner ſubordinate to the firſt. It authoriſes the provincial legiſlature to annul the moſt important laws of the Engliſh Government; the laws relative to property, real as well as perſonal, and thoſe which eſſentially concern the conſervation of the peace, and the perſonal ſafety of the ſubject, which, in all good policy, ought to be nearly the ſame throughout the dominions of the State. The words of this clauſe are, " And our further will and " pleaſure is, that the laws for regulating and " governing property within the province, " as well for the deſcent and enjoyment of " lands, as likewiſe for the enjoyment and " ſucceſſion of goods and chattels; and likewiſe, as to felonies, ſhall continue the ſame " as they ſhall be for the time being, in our " kingdom of England, until the ſaid laws " ſhall *be altered by the ſaid William Penn, his* " *heirs and aſſigns, and by the freemen of the* " *province, their delegates and deputies.*"

Thus,

Thus, while the charter prohibits a diſcordancy between the laws of the inferior ſociety and of the ſuperior, it fully authoriſes it, and that legiſlature which ought to be *inferior and ſubordinate*, is impowered to annul the acts of that which is *ſupreme*.

There is alſo another clauſe intended to preſerve the faith and allegiance of the Proprietaries and the people. But this, like the others, will be found, upon inquiry, equally ineffectual and futile. It directs, that a tranſcript, or duplicate, of all laws which ſhall be made within the province, ſhall, within "five "years after the making thereof, be tranſ-"mitted to the Privy Council for confirma-"tion, or repeal, within ſix months after "tranſmitted." Charles having, in effect, by the independent powers of the Charter, given up the right of Parliament to make laws for the province, or to repeal its acts, it ſeems, ſaw the propriety and neceſſity of eſtabliſhing ſome check on its licentious conduct. This check, he thought, was ſafeſt in his own hands. That he and his predeceſſor, James the Firſt, conceived that the Colonies were their private patri-

mony,

mony, and that the Parliament were not to conſider them as territory annexed to the realm, or to interfere in their Government, is evident from all their Charters; and no part of them demonſtrates this fact more fully than the clauſe before us. For, if America is a part of the dominions of the State, by what right did he aſſume, in his Privy Council, the power of repealing the laws of the inferior ſociety? However this may be, the clauſe is merely directory, and not compulſory. There is no penalty, no forfeiture impoſed on the Proprietaries, nor any mode by which the Privy Council can compel them to tranſmit the laws. And it cannot be reaſonably ſuppoſed, that men, poſſeſſed of unlimited and independent powers, would not make uſe of them whenever neceſſary to gratify their ambition, or to their private emolument—nor that they would not uſe them to the prejudice of the rights of the Crown, and their dependence on the State—nor when they were ſo uſed, that they would tranſmit the laws to a judicature where they were ſure they would be annulled.

But

But let us ſuppoſe, that the Proprietaries ſhould feel themſelves diſpoſed to tranſmit the laws agreeably to the directions of the Charter, we cannot preſume, that they would tranſmit thoſe which they ſhould have reaſon to believe would be repealed, before the time enjoined by the Charter ſhould nearly expire: And this being five years, the province may be governed by them, during that time, however miſchievous to the trade, intereſt, or ſafety, of Great Britain, or repugnant to the laws of the State, or injurious to the rights of the Crown. And if near the end of the term limited, they ſhould be tranſmitted and repealed by his Majeſty in council, that repeal may be diſregarded, and the law be continued in force, without incurring any penalty or forfeiture, there being none impoſed; or laws diſſimilar only in form, and not in ſubſtance, or even the ſame laws may be re-enacted and continued in force for five years more. And I know of no means, ſuppoſing the charter to be valid, by which a legiſlature, whoſe powers are ſo independent, may be called to anſwer for it. Thus the province may, by a little art and addreſs, be governed on principles of polity, heterogeneous, and repugnant

to

to thoſe of the principal ſociety, and ſubverſive of its true intereſt and ſafety.

There is alſo another clauſe, ſaving to the King and his ſucceſſors, a right of "receiving, hearing, and determining, of the appeal or appeals, of all or any perſon or perſons of, in, or belonging to, the territories granted, or touching any judgment to be there made or given." If this ſaving was intended as a check on the laws to be made by the concurrent aſſent of the Proprietary and the people, when injurious to the intereſt of Britain, or to the rights of the Crown, it was a nugatory and vain intent. Can it be ſuppoſed, that either the Proprietary or people, who have aſſented to a law, and who, if upon experience they ſhould find it miſchievous, or inconvenient to themſelves, can repeal it by their own legiſlature, would ever appeal from one which they conceive to be beneficial, however derogatory it might be to the intereſt of Britain, or the rights of the State? It is not in reaſon to be expected; and facts prove the contrary. There are many laws of this province which are of this complexion, againſt the validity of which there

there has been no appeal; nor ever will be, becauſe they gratify the licentious deſires of the people, and deeply affect the rights of the Crown and the Parent State. But, ſuppoſe ſuch appeals ſhould be made, and decrees ſhould be paſſed by his Majeſty in Council, to reverſe the judgments founded on the laws tranſmitted, by whom are thoſe decrees to be carried into execution? Every court, and every officer, judicial as well as miniſterial, are as independent of the Britiſh Crown, as the officers of juſtice in France, and dependent ſolely on the Proprietary and the people, and are ſworn by their oaths of office to execute the very laws, the validity of which the decrees ſhould oppoſe.

The clauſe by which Charles covenants, that neither he, nor his heirs nor ſucceſſors, ſhall levy "any cuſtoms or taxes on the peo-" ple, unleſs the ſame ſhould be by the aſſent " of the Proprietary, or the Chief Governor, " or Aſſembly, or by act of Parliament," is an additional proof, that he meant nothing leſs, than to pay any regard to the fundamental laws of the State. For, did he imagine, that by thoſe laws he held a right to impoſe and

levy

levy cuſtoms or taxes on Britiſh ſubjects? Or did he think he poſſeſſed authority to enable him, with "the aſſent of the Proprietary or "Chief Governor," to do it? or that it was neceſſary to reſerve a right in Parliament to raiſe a reaſonable proportion of aids in any part of the Britiſh dominions? However, this truth is evident, from the whole tenor of the Charters, that he was totally indifferent in reſpect to the preſervation of his own prerogatives, and of every other right of the State, except that of taxation. This he ſeems to have determined, as the great object of his future deſigns, to ſecure if poſſible; and to have done it in various modes, that if one ſhould fail, another might ſucceed. Should his Parliament be intractable on the occaſion, he might, agreeably to the charter, apply to the "Pro-"prietary," *or* to "the Chief Governor," *or* to "the Aſſembly," and, with the aſſent of any of them, levy the aids he wanted. But, it appears, he did not conſider, or if he did, that he was indifferent about the difficulties he had laid in the way to the effectual exerciſe of Parliamentary authority; and that, in caſe they ſhould grant the aids he ſhould require, he had deprived himſelf, his ſucceſſors,

and the Parliament, for ever, of the neceſſary officers and ſervants, who were to levy and collect the taxes impoſed; and if the impoſitions ſhould be diſagreeable to the Proprietary and people, which, it is moſt natural to conceive, they would ever be, that the collection of them would be impracticable.

Upon the whole of theſe futile and abſurd reſervations, the only one that has the reſemblance of a check on the unlimited powers granted to "Mr. Penn, "his heirs and aſſigns," the only inſtance in which they are made amenable to juſtice, is in regard to "the laws of trade and "navigation." They are directed to have an agent always reſident in ſome known place, in, or near, the city of London, and ready to anſwer to the Crown for any miſdemeanors "committed or permitted," by them, againſt thoſe laws; to pay the damages aſcertained in the courts at Weſtminſter;—and in caſe of failure in the payment, the Government may be reſumed by the Crown until it is made.

But,

But, notwithſtanding this proviſion, it is well known, that the laws of trade have been in this province, from its earlieſt ſettlement, moſt ſhamefully violated. How ſhould it be otherwiſe, when the Crown has the appointment of no officer in the province, except the Collector of the Cuſtoms? The other officers entruſted to carry theſe laws into execution, are in the appointment of the Proprietaries. It is not their intereſt to carry them into execution, and it is the intereſt of the people to diſobey them. Where then ſhall this ſingle officer find protection and ſupport in the diſcharge of his duty, ſurrounded, as he is, by officers and people, ſubject to a different maſter, and ready to oppoſe his meaſures? Should he apply to the Proprietary Government, it would not be given. Under theſe circumſtances, his eaſe and his intereſt lead him to watch the merchant juſt ſo much as to procure a bribe, which effectually cloſes his eyes againſt the moſt open importations of cuſtomable goods without an entry, and even of thoſe that are contraband. This has been ſo common, that the art and practice of ſmuggling was never better underſtood, nor carried on with ſo much eaſe, in the

Iſle of Man, as in the ports of the river and bay of Delaware.

Such being the legiſlative powers conferred by this Charter, we will next enquire what were the executive and fœderative. Theſe we ſhall find not leſs indefinite and independent of the Crown, than the former were of the Parliament. "Mr. Penn and his heirs, and his "and their Deputies, and Lieutenants," were veſted with "*free*, *full*, *and abſolute power* "*and authority* to appoint *any* juſtices, ma- "giſtrates, and officers *whatſoever*, for *what* "*cauſes ſoever*, and with *what powers ſoever*, "and in *ſuch form* as to him or them ſhould "ſeem moſt convenient." May we not here enquire, under what law of the State did Charles derive his power to delegate the appointment of all the executive officers of Government to a ſubject, and that too in abſolute and indefeaſible right? Certain I am, that the fundamental laws which ſettled and defined his powers forbid it. Had he, under thoſe laws, any powers without the realm which he had not within it? I imagine not. Should he then have granted a power to a ſubject, and his heirs, to appoint the Judges of the King's

King's Bench, Common Pleas, and Exchequer, and the Juſtices of the Peace of the ſeveral Quarter-Seſſions within the kingdom, would the grant have been valid in law? It would not. The right of theſe appointments are perſonal in the King, and fiduciary for the benefit of his people. He cannot, therefore, delegate them to a ſubject for a *moment*, much leſs *for ever*.

But this is not the only objection to this extravagant clauſe. "Mr. Penn and his "heirs, and his or their Deputies"—that is, the Deputies of Deputies, may appoint "any "officers whatſoever, for what cauſes ſoever, "with what powers ſoever, and in ſuch form "as to him or them ſhould ſeem moſt "convenient." Taking this clauſe in the plain import of the words (and ſo we muſt take it, becauſe there is a declaration in the Charter, that ſuch expoſition of it ſhall be made and allowed in the Britiſh courts, "as "ſhall be adjudged moſt advantageous and "favourable" to Mr. Penn and his heirs), they have an undoubted right to eſtabliſh *all manner* of courts of juſtice, offices and officers, *totally diſſimilar* from thoſe to be

found in the conſtitution of the principal ſociety. They might have adopted the inferior Sanhedrims of the Jewiſh theocracy, or the Tribunals and Prætories of Rome, or the offices of the democratical Cantons of Switzerland, or even the Inquiſition of Spain.

After ſhowing this abſurdity in the grant of the executive powers of Pennſylvania, I need not be particular in my remarks on the other prerogatives. I ſhall, therefore, only obſerve, in general, they were all that the conſtitution had intruſted to its Kings; ſuch as, a right to pardon and aboliſh "crimes and offences"—"to do all and every "thing which, unto a complete eſtabliſh-"ment of juſtice, unto courts, tribunals, and "forms of judicature, and manner of pro-"ceedings, do belong"—"to incorporate "towns into boroughs, and boroughs into "cities"—"to conſtitute ports, havens, and "keys"—to make "ordinances for the pre-"ſervation of the peace, and better govern-"ment of the inhabitants." To which were added, all the rights of war and peace. Mr. Penn and his heirs were further authoriſed to "levy, muſter, and train all ſorts of men"—

"to

" to make war, to purſue the enemies, and " to put them to death by the law of war, " and to do all and every other thing which " unto the charge and office of a Captain-" General of an army belongeth, or *hath* " *accuſtomed* to belong, as fully and freely as " any Captain General of an army hath ever " had the ſame." Theſe royal prerogatives are the ſame, and transferred nearly in the ſame words with thoſe granted to the Proprietary of Maryland. And theſe, I have already ſhewn, are rights veſted in the perſon of the monarch in *truſt*, not *in uſe*, for the benefit and ſafety of the ſociety, and therefore cannot be lawfully granted to another in abſolute tenure and inheritance. Could this poſſibly be lawful, a King might, when he pleaſed, not only diveſt himſelf and his ſucceſſors of all their fiduciary rights and royalties, and give to the kingdom a new King, but veſt him with abſolute ſovereignty, and thereby deſtroy the Government which he is bound by the moſt ſacred of all obligations to preſerve. Such a power in a mixed monarchy, or any other ſociety, except in a patrimonial kingdom, is inconſiſtent with the

nature of its civil conſtitution, and cannot exiſt.

It will throw yet more light on my ſubject, and not be ungrateful to the reader, to trace the conduct of Mr. Penn, juſt emerged from the condition of a ſubject, into all the powers of royalty and ſovereign dominion. I ſhall, therefore, take a ſummary view of his different ſyſtems of Government, inſtituted at different periods. For, veſted with powers ſubject to no controul, he not only adopted what forms of Government he pleaſed, without paying the leaſt regard to the ſtructure and principles of the State, but *altered, or aboliſhed them, at his pleaſure, and eſtabliſhed others in their ſtead.* In doing this, we ſhall find abundant proof, that private intereſt and ambition, without any regard to his politic truſts, were the great pole ſtars by which his public conduct was directed. The ſole right and poſſeſſion of an immenſe country, from every acre of which he intended to draw a revenue, opened to his view a proſpect of immenſe wealth; the extenſive royalties, and independent rights, granted by his patent,

opened

opened another object yet more enchanting to the mind of man, that of becoming an independent Prince. But, well knowing that wealth and revenue were neceſſary to influence, that influence was neceſſary to power, and that power was the only means by which his ambition could be gratified and ſecured; he devoted, in the firſt place, all his talents to the improvement of his eſtate and his revenues. Governed by this policy, all his extenſive rights, the prerogatives of the Crown entruſted to his care, and even his ambition itſelf, gave way to the ſettlement of his province, and to his ſchemes for increaſing his wealth. He publiſhed a ſplendid account of the excellence of the climate, ſoil, waters, and other natural advantages, of the country. But the more effectually to allure the ſubjects of the State to emigrate to his new dominions, in compliance with the humour of the times, and particularly with that of the firſt adventurers, he gave up all the royal rights and franchiſes, and inſtituted a Government on democratical principles, without the mixture of a ſingle ray of monarchy or ariſtocracy.

" The

" The frame of Government," for ſo it was called, was truly Utopian. A council, conſiſting of ſeventy-two members, always changing, and yet always in being, was eſtabliſhed. The members were choſen by the freemen. One third of them were to continue in office for three years; one-third for two; and one-third for one, in ſuch manner, that the offices of one-third ſhould ceaſe, and their places be ſupplied in annual ſucceſſion. Of this council the Proprietary, or his Deputy, was to be perpetual Preſident, entitled, on a queſtion, to *three votes only*. The Aſſembly, or ſecond branch, was, at firſt, to conſiſt of all the freemen, afterwards of two hundred, and never to exceed five hundred. In theſe two popular Aſſemblies, all the legiſlative and executive powers were ſettled. By their joint conſent, all laws were to be made, all inferior ſocieties to be incorporated, all offices conſtituted, all officers appointed, and all the affairs of the province tranſacted and directed. Here, ſurely, Mr. Penn's ambition was aſleep, and all ſenſe of duty to the Crown, as well as to himſelf, was forgotten, or he could not, at once, have offered up all thoſe extenſive franchiſes and royalties which he held in truſt

for

for the Crown, to the humour of the people. For, what could three votes out of ſeventy-five avail in preſerving the royal prerogatives in a popular Aſſembly? Or what ſhare of power or influence did he expect to maintain, in a legiſlature compoſed of two democratical houſes, by his triple vote? Does not this example of the abuſe of the royal rights, in the hands of a ſubject, confirm the wiſdom of the law, which has made them fiduciary, and forbids their alienation?

Mr. Penn, not from any regard to a juſt ſubordination of his province to the State, but perceiving that his own weight was little more than nominal, wiſhed to bring this ſtrange jumble of democratical powers into a leſs and more manageable compaſs. And it was fortunate, that the people had their reaſons for entertaining the ſame deſire. Their numbers were few. The attendance of ſo many of them on the public ſervice was injurious to their private affairs. They were ſettled in a wilderneſs, and the clearing of their lands, and providing for the ſubſiſtence of their families, prevailed over their thirſt for power. For, at this time, they were partly fed by the benevolence

benevolence of the natives, whom, in the inſolence of our civilized pride, we call Savages; but who, conſidering the fewneſs of their immoralities, and their rigid obſervation of the moral virtues, deſerve a better name. In this ſtate of the popular temper, Mr. Penn called a Council and Aſſembly at Cheſter, in 1682. In this general Aſſembly, the numbers of the Council were reduced to eighteen, and of the Aſſembly to thirty-ſix.

In this ſtrange ſyſtem of legiſlation, founded in no precedent, nor conſiſtent with any reaſon or policy, we find two popular branches, independent of each other, equal in power, and acting within the ſame ſphere, without a head, or any thing to check or balance their unlawful purſuits. It is not, therefore, ſurpriſing, that, during its continuance, the province remained a ſcene of conteſts for power, diſcontent, and public quarrels; not in reſpect to the prerogatives of the Crown, for theſe were totally deſtroyed, but reſpecting the democratical rights and influence of the two Houſes.

Previouſly to the eſtabliſhment of this frame of Government, Mr. Penn had obtained from the

the Duke of York, a conveyance of the tract of country now called the Territory of Pennſylvania, for which the Duke had before received a grant from the Crown; but, as theſe were mere transfers of the land, the powers of Government over the people remained in the Crown. Yet, encouraged by the unlimited extent and independent tenure of his provincial rights, and concealed, as he was, behind an ocean 3000 miles diſtant from the ſeat and ſuperintendence of the Crown, he, without heſitation, veſted all the royal and legiſlative rights in the people of the territory, and united them in his provincial legiſlature. The means by which he accompliſhed this meaſure was artful and deceptive. He prevailed on the people, of both places, to believe, that the grants of the territory conveyed the rights of Government, as well as of the ſoil, and perſuaded them to ſend an equal number of delegates to the provincial Council and Aſſembly. By this mixture of lawful (if we can ſuppoſe the provincial Charter to be lawful) and uſurped authority, the province and territory were governed during eight years.

Nothing

Nothing leſs than a ſenſe of the ſecurity he derived from the diſtance of his Government from the ſeat and ſuperintendence of the Crown, could have induced him to take this meaſure, without its approbation. It was a bold and preſumptuous meaſure, which affords a ſtrong proof of what men, intruſted with unlimited powers, at a diſtance from the State, will preſume to do. Did he reflect, that by thus mixing the people of the territory, over whom he had no powers of Government, with thoſe of the province, in the legiſlative and executive authorities, every law they enacted, and every office, judicial or miniſterial, they inſtituted, was void? that for every arreſt made, for every penalty enforced, and for every life taken, in virtue of ſuch laws, they were amenable to the juſtice of the State? and that, by thus uſurping the powers of Government over Britiſh ſubjects, without the leaſt authority, he was guilty of a high miſdemeanor, if not of high treaſon?

However, it was not long before Mr. Penn ſaw the folly of his Utopian ſyſtem; and that he had given up to the governed all the

rights of Government, and reduced himſelf to a cypher in the legiſlative and executive councils. He ſaw his province, which, being yet in its infancy, required all the aids of wiſdom and harmony to facilitate its future improvement, made, by his own indiſcretion, the theatre of political ſquabble and confuſion. Being obliged to return to England, by a diſpute between himſelf and Lord Baltimore, reſpecting the boundaries of their patents, he appointed five commiſſioners to tranſact the public affairs; and perceiving the natural turbulence of his new Government, he enjoined them, if poſſible, to diſſolve it. But as theſe men could not ſucceed in the meaſure, he diſſolved the Commiſſion, and appointed a Governor.

If, by this ſtep, he expected to provide a remedy againſt the anarchy which was ingrafted in his ſyſtem of Government, he was miſtaken. For, no ſooner did his Governor call a provincial Council and Aſſembly, but the two orders of the Government appeared in their native confuſion. The Aſſembly began with inſiſting on a redreſs of grievances, and the impeachment of miniſters. The Governor, in return, wreſted by violence, out of the

the hands of the Aſſembly, one of their members, whom he had illegally impriſoned, when he was about to be diſcharged by habeas corpus. The Council quarrelled with the Aſſembly, and the Aſſembly quarrelled with the Council. All was anarchy! And thus were the peace and riſing proſperity of the provice wrecked on the rock of republican polity, eſtabliſhed by the Proprietary, whom the great but uninformed Monteſquieu immortaliſes in the character of a ſecond Lycurgus.

However, under this Government, the province and territories continued until the year 1696, when ſuch had been the conduct of Mr. Penn and the people, that *William and Mary* found it neceſſary to reſume the powers of Government into their own hands. The reaſons given to the Aſſembly for this meaſure, by the Royal Governor, are too characteriſtic of the wretched ſtate of the province, to be omitted. They were, " the " neglect and miſcarriages in the late Pro- " prietary adminiſtration—the want of ne- " ceſſary defence againſt the enemy—the " danger of the province being loſt from the Crown"

" Crown ;"—and for that—" the *conſtitution* " *of their Majeſties Government and that of* " *Mr. Penn's, were in direct oppoſition one to* " *the other* ; under which circumſtances, " their Majeſties aſſerted their *undoubted right* " *to govern their ſubjects in the province.*"

After three years hard travail, Mr. Penn procured a reſtoration of his charter; but it would ſeem, that it was upon condition he ſhould not reſtore to the people their former democratical confuſion. And we may reaſonably conclude, that he had ſeen the folly of depriving himſelf and his heirs of the powers conferred by the royal grant, and was ſenſible of the miſchiefs ariſing from it.

His Governor, Markham, called an Aſſembly, under the powers of the royal grant, but very different from that which had been ſettled in the provincial frame of Government. The Aſſembly complained of the change, but they complained in vain. They propoſed a new ſyſtem of fundamental laws, which were no more favourable to the rights of the Crown than the former; but they were not adopted.

On the arrival of the Proprietary, and his aſſumption of the Government, the delegates of the people were repeatedly convened. The province was now deſtitute of any eſtabliſhed form of Government. The rights both of the Proprietaries and the people were unſettled. They had no body of laws, no fixed rules for the deſcent of lands, or the ſucceſſion of property. In ſhort, all was confuſion. And, beſides, the Aſſembly had diſcovered, that they had been deceived in reſpect to the pretended right of the Proprietary to govern the territories. They ſaw the illegality of their union with them, and the impracticability of their former frame of Government. Theſe conſiderations led to a third revolution in their ſyſtem of polity.

But before this revolution was effected, much conteſt took place; Mr. Penn zealouſly contending to regain thoſe powers he had weakly given up, and the people, for thoſe rights and privileges which they had lately poſſeſſed. Neither of them choſe to appeal to the Crown for a deciſion of the controverſy. They knew, too well, that both would have

have been equally expoſed: Mr. Penn, for having granted to the people all the rights of the Crown, intruſted to his adminiſtration; and both Mr. Penn and his Aſſembly, for aſſuming a power of life and death over Britiſh ſubjects, without the leaſt authority. However, at length, the matters in diſpute were compounded. It was agreed, that the Aſſembly ſhould hold all the rights of the Houſe of Commons, and that the rights of the Crown, and Houſe of Lords, ſhould be divided between them. But the partition was not equal, nor conſiſtent with the nature of mixed Government. The people had art and addreſs ſufficient to ſecure the greateſt part. This will appear from the provincial charter granted by Mr. Penn in the year 1701, under which, without any fundamental alteration, the province has been, I can ſcarcely ſay, *governed*, ever ſince, until the late declaration of American independence.

By this charter, the provincial Government was ſeparated from the territorial. A new charter was alſo given to the territory, formed on the ſame model, and in no eſ-

ſential point different from the provincial. Theſe charters were accepted by the people. The ſame perſon has ever been appointed Governor of both by ſeveral commiſſions. As provincial, he is appointed by the ſole power of the Proprietaries; as territorial, by them, with the approbation of the Crown.

The legiſlative Council was intirely aboliſhed, and the territorial, as well as provincial, Government has, ever ſince, conſiſted of only two legiſlative branches, a Governor and Aſſembly. The Governor has a right to negative all bills. The Aſſembly is annually choſen, and when met, for which there is a day fixed in every year, they have power "to *ſit* on their own adjournments, to pre-"pare bills, impeach criminals, redreſs griev-"ances, with all other powers and privileges "of an Aſſembly, according to the *rights of* "*free-born ſubjects of England*, and the "cuſtoms obſerved in any of the King's "plantations." The Governor holds the right of appointing the magiſtrates and the judicial officers; but the executive officers, viz. Sheriffs and Coroners, are annually choſen by the people, and Clerks of the Peace by the

Juſtices of the Peace in their ſeſſions; the Governor having the right to appoint one out of two perſons ſo choſen. The commiſſioners and aſſeſſors for the levying and raiſing all taxes, are annually elected by the people, on which choice the Governor has no negative. The High Treaſurer of the province is appointed, annually, by the Aſſembly, to whom alone he is accountable for his conduct. The ſalaries of the Governor, and of every officer of Government, are annually ſettled and granted by them, and paid by their orders drawn on the Treaſury *. Theſe ſalaries

* A Proprietary Governor, if an honeſt man, is certainly the moſt wretched of human beings. It is a maxim of the higheſt authority, that "a man cannot ſerve two maſters." But this unhappy being is bound to obey *three*, whoſe intereſt and views are very different from, and often repugnant to, each other. He receives inſtructions from the Proprietaries, founded in their private intereſt, and gives bond under a heavy penalty to obey them; he is dependent on the Aſſembly for the annual ſubſiſtence of himſelf and family; and he receives, occaſionally, inſtructions from the Crown. If he does not rigorouſly fulfil every Proprietary mandate, however injurious to the province, or inconſiſtent with his royal inſtructions, he loſes his office, and is liable to the penalty of his bond. If he does not gratify the Aſſembly in what they think juſt claims, he lives in perpetual quarrel, if he may be ſaid to live at all, for he certainly loſes his ſalary. The yoke of his third maſter has ever been

ſalaries they increaſe or diminiſh, grant or withhold, at their pleaſure. Thus the legiſlative powers of the monarchical and ariſtocratical parts of the Britiſh conſtitution, were divided between the Proprietary and the People. The rights of the Crown to call, prorogue, or diſſolve the Aſſembly, and to appoint and direct the Treaſury, were given up to the Aſſembly; the right to appoint Sheriffs and Coroners ſurrendered to the People.

By this Charter, we may perceive, that Mr. Penn recovered ſome of thoſe legiſlative and executive rights, which he had, to ſerve his own intereſt, imprudently given up; ſuch as his right of finally aſſenting to, or reject-

the moſt eaſy, not only becauſe moſt reaſonable, but becauſe his ſins againſt the royal orders are concealed. It is always the intereſt of the Proprietaries, and ſometimes of the Aſſembly, to conceal them, and no inquiſition is made after them. The Privy Council, and the Board of Trade, have hitherto relied too much on the integrity of the Proprietaries, and their Governors, in their management and rule of their provinces. Whether this has ariſen from their backwardneſs to interfere with the unlimited rights of Proprietary dominion, or from their other engagements, I ſhall not determine. But, however, the fact is certainly ſo. And to one of theſe cauſes the continuance of the Proprietary Governments is certainly owing.

ing,

ing, all legiſlative acts, and of appointing the magiſtracy, with a number of others of leſs conſequence. But, inſtead of retaining a right to call the Aſſembly, occaſionally, by his writ, he made his Charter a perpetual writ for calling an Aſſembly annually, with a right to continue ſitting the whole year, or to ſit occaſionally on their own adjournments. He gave up the right of appointing the executive officers of juſtice to the people, and all participation in the provincial treaſury. In this ſtrange manner were the principles of Government jumbled together, without the leaſt regard to the rights of the Crown, or the ſubordination of the province to the State. Two independent powers, acting within the ſame ſphere, and having a right to decide on the ſame matters, were placed in oppoſition to each other, without any intermediate check or balance. There was nothing to curb a lawleſs exerciſe of their diſtinct rights; nor was there even that ſlender ſecurity which ariſes from an equality of power. The Proprietary, who was placed in one ſcale, retained a ſmall ſhare of thoſe rights which he ought to poſſeſs as a juſt dependent repreſentative of the Crown, and which were neceſ-

ſary to his weight and influence in the Government. To the Aſſembly, which was placed in the other ſcale, he granted many of thoſe important rights, without which he could maintain neither the authority of the Crown, nor the public peace.

But though Mr. Penn did not recover all his former unlimited powers, yet he obtained enough to create a thirſt for more. From this time, his actions prove, that he invariably purſued his private intereſt, and the objects of his ambition, without regard to any other conſideration whatever. Equally inattentive to his duty to the Crown, and to the rights of the people, which he had thus ſolemnly confirmed, his whole conduct, when preſent, and his inſtructions to the Governors when abſent, bore no other complexion. On his part, attempts to wreſt from the people thoſe rights which he had conferred on them, were continually made. On the other hand, the Aſſemblies, naturally fond of their rights, and perceiving the danger of ſuch extenſive powers as were conferred by the royal patent, on a ſubject *in no reſpect dependent on, or accountable*

accountable to, the Crown, as conſtantly oppoſed thoſe attempts.

The hiſtory of the firſt Proprietary is replete with inſtances of his violations of public faith with the people †; of his breaches of contract with the firſt adventurers; of his appropriating the moſt valuable lands to his private uſe, which had been appropriated to theirs; of his miſapplications of the public monies, without accounting for them; and of

† Mr. Penn, at firſt, granted his lands to the people for a certain ſum of money for each hundred acres, without reſerving an annual quit-rent. But, ſoon after his aſſuming the Government, he began to reſerve an annual rent, payable for ever, in addition to the purchaſe-money. Againſt this burden the people remonſtrated. But Mr. Penn, artfully diſtinguiſhing between his two capacities of Proprietary and Governor, and inſiſting that Government ought to be ſupported with dignity and ſplendor, and that, by applying theſe rents to that ſupport, the people would be exempt from taxes, they agreed to the meaſure. Upon this ground, the quit-rents ought to be conſidered as public money, in the nature of the civil liſt, and, in all equity, to be applied to the ſupport of the King's repreſentative. But the cuſtom was no ſooner eſtabliſhed, than Mr. Penn applied them, without heſitation, to his private uſe, and has conſidered them, ever ſince, as a part of his private eſtate; while the people have been obliged to ſupport the Governor, and the officers of juſtice, out of their own purſes. The immenſe revenues ariſing from theſe rents, are to be ſeen in the Appendix.

his

his extortions, and the extortions of his officers, againſt whom, ſupported as they were by his power, the people could obtain no redreſs. The officers of the courts of juſtice were of his own appointment. They held their commiſſions during his pleaſure. All ſuits brought againſt him or them, were determined by theſe dependent judges. In Britain, a ſubject cannot receive an injury from any of the officers of the Crown, or even from the Crown itſelf, without having a perfect remedy. His claim is examined, and decided, before independent judges. But, in this inferior ſociety, the Proprietaries and their officers are both judges and parties: So that no juſtice or relief againſt their oppreſſions can be obtained by the people. Theſe cauſes have deſtroyed all reſpect for the Proprietary Government. Its influence and power being directed by private intereſt and ambition, and not by the public benefit, has become contemptible, weak, and odious to the people. Hence, parties and public conteſts for power took place, the public peace was neglected, and the public ſafety endangered. In this confuſion, neither the rights nor intereſt of the Proprietary or people were ſafe.

And

And hitherto, neither of them had perceived, that the ſecurity they wanted was only to be found in a juſt ſubordination to the State.

Mr. Penn was a man of education, and ſtrong mental abilities, though by no means verſed in politic law, or the ſcience of Government. His genius had led him to the ſtudy of religion, and to become a noted Preacher and Head of the Quakers. He was alſo a man of uncommon application to whatever he undertook. He had now been in the poſſeſſion of the Government thirty-ſix years. Here experience became his inſtructor. From thence, he learned, that neither his firſt Utopian ſyſtems, nor even that in which he had confounded the principles of monarchy and democracy, were competent to the end of civil ſociety. He was convinced, that however great his abilities might be, they were not ſufficient to govern the province; and that it was abſolutely neceſſary, not only to its public peace, but to the private intereſt of his family, to ſurrender the Government. Strongly impreſſed with this truth, and foreſeeing the miſchiefs which would ariſe to his deſcendants, ſhould he retain his powers, he made

made the propoſal to the Earl of Oxford, then Prime Miniſter. A contract was accordingly made, in which the Crown agreed to give 12,000l. for the ſurrender. Of the purchaſe-money 2000l. was paid, and the Attorney General was directed to draw the deed †. Mr. Penn being ſuddenly ſeized with a palſy, became inſane, and incapable of executing it. But, ſurely, under this contract, the Crown hath an undoubted right to compel the heirs of Mr. Penn, upon a tender of the reſidue of the purchaſe-money, to a ſpecific performance of it.

In the year 1718, Mr. Penn, after lingering ſeven years under his diſeaſe, died. But neither his ambition, nor his attachment to his private intereſt, nor the turbulence of his Government, died with him. The two former deſcended to his ſucceſſors, and the ſeeds of diſcord were inherent in the injudicious conſtitution of his Government. To trace minutely the arbitrary conduct of his ſucceſſors, and their Governors, acting under

† An entry of the contract and payment, I have been informed, is to be ſeen in the minutes of the Privy Council.

their

their ſecret inſtructions, their perpetual conteſts with the Aſſemblies for more power, and to ſkreen their private eſtate from contributing towards its own protection, and the conſequent miſchiefs and obſtructions to the ſervice of the Crown, would be tedious to the reader, and fatiguing to the writer. And yet a brief recital of them is neceſſary to my ſubject.

Many inſtances may be found, in the hiſtory of this province, of a cheerful compliance, in the Aſſemblies, with the requiſitions of the Crown, while they poſſeſſed the ſole right of diſpoſing of the public monies. For this right they held under ſeveral acts of Aſſembly, aſſented to by the Proprietaries. That the Proprietaries violated their truſt, in giving up to the people ſo important a prerogative of the Crown, no one can doubt. However, it was a temporary right; and while it remained in the Aſſembly, they continued to comply with the royal requiſitions, until their fund was exhauſted. But, even for this compliance with their duty to the Crown, they were ſeverely cenſured and abuſed by the Proprietary Deputy.

Their

Their own funds being exhauſted, the Proprietary aſſent became neceſſary to their grants. Aids were offered on terms the moſt juſt, and in the only modes by which they could be poſſibly raiſed; but every obſtruction was thrown in their way by the Governors. Nothing would ſatisfy the Proprietaries, but a total exemption of their eſtate, and an abſolute right to direct the people in the manner in which their aids to the Crown ſhould be given. And upon theſe unjuſt principles, no leſs than ſeven different ſupply bills were rejected by them.

The Court of France had long meditated the conqueſt of North America. The meaſures taken for that purpoſe alarmed the Colonies. They implored the protection of Great Britain. A fleet and army was ſent over to their aſſiſtance. And requiſitions paſſed from the Crown, to the ſeveral Aſſemblies, to unite in granting their reaſonable proportion of troops, to co-operate with the King's forces. In conſequence of theſe requiſitions, and in diſcharge of their duty to the Crown, and themſelves, the Aſſemblies of this province tendered bills to the Proprietary Governors,

granting to the Crown, at different times, the following ſums, viz.

£.	10,000	To Governor Hamilton.
	15,000	
	20,000	To Governor Morris.
	25,000	
	15,000	
	50,000	
	60,000	
£.	195,000	

The firſt five of theſe ſums were refuſed by the Governors, under a pretence, that the tenor of the bills granting them was contrary to an old royal inſtruction. This inſtruction had long before been ſuperſeded by a proviſion in an act of Parliament, made at the inſtance of the Crown, to remedy the miſchiefs intended to be prevented by the inſtruction. The bills were by no means inconſiſtent with the act, nor the ſpirit of the inſtruction; and ſeveral of the Proprietary Governors, when it ſuited the intereſt of the Proprietaries, had conſidered it as obſolete, and not obligatory. Yet this obſolete royal inſtruction was relied on, and held out to the people, as a juſtification for refuſing the aids offered. The Aſſembly knew, although they could not prove,

that the impediments to their grants were ſecret Proprietary inſtructions. They called on the Governor to produce them, that they might know on what ground they were to act, and whether they were to obey the requiſitions of their Sovereign, made for the ſafety of the Province, or the mandates of a ſubject, founded in his private intereſt, and the groſſeſt injuſtice. But their intreaties were diſregarded, and the inſtructions carefully concealed by Governors Hamilton and Morris. However, at length, a Governor (William Denny, Eſq;) was found, who, though bound in a penalty of 5000 l. to obey, if not to conceal them, ſtruck with their injuſtice and cruelty, at a time the province was in the moſt imminent danger, was hardy enough to lay them before the Aſſembly.

It now appeared, that the only impediment to the aids granted to the Crown, were theſe latent, illegal, and unjuſt inſtructions, *forbidding the Governors to aſſent to any act for taxing the Proprietary eſtate towards the common defence.* I call theſe inſtructions, what all men will call them, illegal and unjuſt; becauſe the bills were land-tax bills, by which

all

all the lands in the province were to be equally rated; and by the laws of the Britiſh conſtitution, the landed eſtate of every nobleman in the kingdom, of the Prince of Wales, and even the revenues of the Crown itſelf, in every act of Parliament for laying a tax upon real eſtates, are included. Why then the Proprietary landed eſtate, and more eſpecially their immenſe annual revenues, ſhould be exempted, no reaſon can be aſſigned, except that which ariſes from Proprietary ambition, and a thirſt for a pre-eminence over their people, which is neither claimed by the nobility, nor by the King himſelf over his ſubjects?

At length, more from a dread of the complaints of the Aſſembly to the Crown, which had been threatened, than from a conſciouſneſs of the injuſtice of the inſtruction, the Proprietaries gave way: but not to the taxation of their eſtate; for they dreaded a precedent, however equitable and juſt, which ſhould place their revenues in the ſame ſtate with thoſe of the nobility, or even with thoſe of the Crown; and therefore, to avoid the precedent, they gave what they called a "free

" gift," towards the protection of their *own eſtates*, in common with the people's. The Aſſembly juſtly diſdaining the terms, yet, in compliance with their duty to the Crown, paſſed the bill for granting 60,000 l. to the King's uſe. This ſum, together with the " free gift," were ſoon expended. Further ſupplies were called for by the Crown. The Proprietary inſtructions remained unrevoked. A bill for granting 100,000 l. taxing the Proprietary eſtates, in common with thoſe of the people, was preſented to the Governor. The former conteſt was renewed, and both parties were pertinacious. The province was invaded, and the King's ſervice was obſtructed.

Sir Jeffrey Amherſt commanding the King's forces in America, perceiving the impediments to his Majeſty's ſervice, given by ſo opulent a province, came to Philadelphia with a deſign to remove them. He judiciouſly conferred, firſt with the Proprietary Governor, and then with the leading members of Aſſembly. The King's ſervice being the great object of his duty, he wiſhed to prevail on either party to give way. The Aſſembly was obſtinately juſt; and the Governor, notwithſtanding his

bond

bond to obey the inſtructions, after much delay, was prevailed on to paſs the bill. For this act of duty to the Crown, and of juſtice to the People, Governor Denny was ſuperſeded by one of the Proprietaries. On his return to Britain, he was threatened with a ſuit on his bond. But taking good advice, he withſtood the threat, and nothing was done. The Proprietaries alſo took advice, and being convinced, that their inſtructions, and the bond to obſerve them, were fundamentally illegal and unjuſt, did not preſume to bring them into legal diſcuſſion.

Thus did the Proprietaries, relying on their unlimited powers, and the influence of their immenſe eſtate, venture to counteract the requiſitions of the Crown, to obſtruct the aids of the people to their ſovereign, for the common defence, to trifle with the ſafety of a province committed to their care, and even to throw it into tumult and diſorder, when the enemy was within its borders, and when union and harmony was moſt neceſſary to its preſervation. Regardleſs of their duty to the Crown, of their reciprocal obligation to their fellow-ſubjects, and of the high and im-

portant truſt committed to their hands; they would not ſuffer their Aſſemblies to grant the aids for the common ſafety, unleſs their own enormous eſtate was exempted from its reaſonable contribution.

I ſhould not do juſtice to the Aſſembly, if I did not add their own conciſe arguments, and warm expoſtulations with the Governor, in this important conteſt. They tell him, in anſwer to one of his meſſages, "On our "ſaying, that ſome Proprietaries and Gover- "nors of *petty colonies* aſſume more prerogatives and privileges than were ever claimed "by their *Royal Maſter*; the Governor "grows warm *in behalf of the Proprietaries*, "and demands, with all the air of a perſon "conſcious of being in the right; *What in- "ſtances can you give of that aſſuming be- "haviour of your Proprietaries?* We anſwer, "The preſent inſtance; for the King does "not claim an exemption from taxes for his "private eſtate, as our Proprietaries do. "*Have they ever claimed any right or prero- "gative, not granted them by the Royal Char- "ter, or reſerved by that of their father?* "Yes, the right of being exempt from taxes

"for

" for their eſtate in Pennſylvania, when all
" their fellow-ſubjects (for the Proprietaries
" are ſubjects, *though the Governor ſeems to*
" *diſdain the term)* both in England and
" America, not excepting even the Lords
" and Commons, are now obliged to undergo
" a tax for the recovery *of a part, and de-*
" *fence of the reſt, of that very eſtate.* This
" right is not granted by the Royal Charter,
" nor could it be granted by their father's
" Charter. *Can you lay to their charge one*
" *inſtance of injuſtice or ſeverity?* This is an
" act of *injuſtice* and *ſeverity*, to inſiſt, that
" the people ſhall not be allowed to raiſe
" money for their own defence, unleſs they
" will agree to *defend the Proprietary eſtates*
" *gratis.* If this be complied with, and the
" war continues, what ſhall hinder them
" another year, when the 50,000 l. are ex-
" pended, to require, that before we are al-
" lowed to raiſe another ſum for the ſame
" purpoſe, we ſhall agree, not only to defend
" their lands, but to *plough* them. For this
" their Lieutenant may allege, " the uſage
" and cuſtom in Germany," and put us in
" mind, that we are chiefly *Germans.* Who
" can aſſure us, that their unappropriated

" lands, ſo long kept untenanted and idle, " are not reſerved in expectation of ſome " ſuch fortunate opportunity? Can other " inſtances, in anſwer to the Governor's " queſtions, be neceſſary? If he thinks it " diſcreet to inſiſt on more, they may be ſoon " at his ſervice." Among many of the inſtances alluded to by the Aſſembly, the following was one. The Proprietary had, long before, prevailed on the people to pay an annual rent for every hundred acres of land, beſides the purchaſe-money, towards his ſupport as Governor of the province, and other public uſes; pretending, that it would relieve the people from taxes. But, as ſoon as the Proprietary gave up the Government to a Deputy, he forgot his engagement to the people, and conſidered theſe rents as his private eſtate, and left his Deputy to be ſupported by taxes on the people. The immenſe ſum he thus cajoled the people out of, is to be ſeen in the Appendix.

What miſchiefs, leſs than theſe, could any ſenſible man expect from an union of immenſe property, and exorbitant powers, in the hands of a ſubject? Does not all experi-

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ence prove, that property begets influence—influence power—and that when this artificial power is united with real and unbounded authority, it never fails to produce lawleſs ambition, and a thirſt for *ſupremacy and independence?*

The miſchiefs ariſing from Proprietary injuſtice and ambition, were not confined to the ſervice of the Crown. The diſputes between the two branches of the legiſlature, have often broke out into the moſt dangerous tumults and riots; riots which ever ſprung from very unuſual cauſes. They were riots, not ariſing from the licentiouſneſs of the *governed*, but from the ambitious and intereſted deſigns of the *Governors*. For theſe riots were raiſed, and led by men of their own party, to enforce their own unjuſt meaſures, while no inſtance can be produced, from the firſt ſettlement of the province, of any riot on the part of the Aſſembly, in oppoſition to the Proprietary claims. This province was originally ſettled by Quakers. Many of the eſtabliſhed church ſoon after joined them. Theſe men, while they retained their public influ-

ence, were ever averſe to tumults, and contented themſelves under their oppreſſion, with appealing for juſtice to the throne. A brief account of theſe riots will not be foreign from my ſubject.

So early as the beginning of this century, viz. in the years 1706 and 1710, during the rule of the firſt Proprietary, by the tumultuary conduct of his partizans, he overawed the general elections, and procured Aſſemblies entirely ſubſervient to his purpoſes. In the year 1740, his ſucceſſors, having theſe precedents before them, and having failed in many arbitrary deſigns, founded in their private intereſts, reſolved to follow the example of their predeceſſor. This could not be done without violating the freedom of the elections. A mob was raiſed in Philadelphia, and led by their own Juſtices of the Peace, to drive the Electors from the place of voting. This was effected for a time; but, at length, their antagoniſts having collected their force, repulſed them in their turn.

In the beginning of the laſt war, a mob was raiſed in the county of Cheſter, and brought down to Philadelphia, to compel the Aſſembly

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to exempt the Proprietary from its juſt proportion of aids demanded by the Crown, for the defence of the Colonies againſt the French and Indians. To theſe aids the Proprietaries had forbid the Governor, by their inſtructions, to contribute, although the French had actually invaded their province. The Aſſembly were obliged to admit this tumultuous body, headed by the Proprietary partizans, into the houſe. But, upon having explained to them the offers they had made, in purſuance of the royal requiſitions, and the unjuſt and arbitrary obſtructions given to them by the Governor, the people were ſatisfied, and no miſchief enſued.

Shortly after, another mob, well known in the hiſtory of this province by the name of the Paxton Rioters, was raiſed on the frontiers for the ſame unjuſt purpoſe. Theſe men were Preſbyterians, who had lately become the friends and allies of the Proprietaries, and whoſe enthuſiaſtic zeal had taught them to hate what they called Savages, Infidels, and Heretics, and that it was lawful to put them to death. In conſequence of this opinion, they had lately maſſacred all the Indians in the

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town of Coneſtogo, near Lancaſter, where they had lived many years inoffenſively under the protection of the Government. Of this cruel and unprovoked murder, little notice was taken by Government, although it was warmly preſſed by the Aſſembly to bring them to juſtice.

The annals of mankind afford no inſtance of a maſſacre more horrid and ſavage than that of Coneſtogo. Theſe unhappy Indians were the remains of the nation who received Mr. Penn, on his firſt arrival in the Delaware, and with unbounded hoſpitality ſupplied his people with every neceſſary their country afforded. They were ſettled on a tract of land, given to them by Mr. Penn, as a mark of his gratitude for the benefits he had received. Their demeanor had been, from the firſt ſettlement of the province, peaceable and upright. But they were infidels, and for that reaſon alone became the objects of Preſbyterian vengeance. A number of thoſe enthuſiaſtic ſectaries, having doomed theſe inoffenſive people to deſtruction, came down from Paxton in the night, and, with a zeal equal to their barbarity, murdered all the

the old men, women, and children, and, ſetting fire to their houſes, burnt their bodies. The young men and boys, who happened to be abſent in hunting, eſcaped their fury. On their return, they found no remains of their ancient fathers and mothers, of their wives, brothers, ſiſters, and infants, but their bones and aſhes. Not to dwell on a ſubject in which humanity muſt be ſo much wounded! The young men and boys ſought immediate refuge in the gaol and work-houſe at Lancaſter, hoping to be ſafe under the eye of the magiſtracy; but they ſought it in vain. Forty of the ſame ſectaries, not yet ſatiated with blood, in a few days after broke open the gaol and work-houſe, at noon-day, and ſacrificed theſe unfortunate men in addition to their maſſacre at Coneſtogo. It was remarkable, with what perfect reſignation theſe unhappy victims ſubmitted to their fate. Retired to a particular room, which would hold them all, and fallen on their knees, not to implore the mercy of their murderers, but that of Heaven, they, without a murmur, and with all the coolneſs of perfect reſignation, received the broad ſword and tomahawk in their ſkulls. A little boy, who eſcaped to a neceſſary, in

hope of ſafety, had climbed up to the joiſts; but even this infant did not meet with mercy from the furious barbarity of theſe fanatics. An old grey-headed elder, of their meeting, in his inquiſitive ſearch, found him, and, with no more remorſe than he would have deſtroyed a wolf, pierced his heart with a ball from a rifle.

This cruel and unprovoked maſſacre alarmed every honeſt man in the province. It called forth the attention of the Aſſembly, who finding a ſhameful indolence in the Government, voted a reward of 500 l. for apprehending each of the murderers, and preſſed the Governor to take the proper meaſures to bring them to juſtice. A proclamation was iſſued, offering the reward, but no other ſtep was taken †, although the maſſacre was committed in the preſence of the Proprietary magiſtracy, and the names of many of the murderers were well known; and though the Aſſembly and people, in general, were ready, and anxious, to unite with the officers of Government in bringing them to juſtice.

† No order to the Sheriff of the county, or warrant, was ever iſſued for apprehending them.

Encouraged

Encouraged by this tenderneſs in the officers of Government towards theſe enthuſiaſts, fifteen hundred men, armed with rifles, proceeded from the frontiers, towards the city of Philadelphia, where the Aſſembly was ſitting. Their deſign was, to compel them to exempt the Proprietary eſtate from taxation. Thus far only the views of the Proprietary party, who had adviſed the meaſure, extended. But theſe lawleſs men, as ſoon as embodied, reſolved to add to their original deſign a maſſacre of one hundred and thirty friendly Indians, who had taken refuge from the French, in Philadelphia, under the protection of Government. The ſcheme was conducted with ſo much ſecrecy, that the Aſſembly had no notice of it until the rioters were near the city. It providentially happened, that a fall of rain had rendered the Schuylkill unfordable. This ſtopped their progreſs. The Proprietary party finding that they had raiſed a Devil which they could neither direct nor appeaſe, and the Governor, alarmed at the conſequence which might attend the murder of ſo many innocent men, under his own eye, and to whom he had pledged the public faith, called on the members of Aſſembly for their aſſiſtance.

Theſe armed their friends, and, before the rioters could croſs the Schuylkill, the city was in ſome poſture of defence. The military array of the citizens intimidated the rioters. They gave up their coercive power over the Aſſembly, and their intended maſſacre of the innocent Indians, and contented themſelves with ſending two of their number to repreſent their pretended grievances.

Theſe inſtances of riot are related to ſhow, that thoſe who were bound to preſerve the public peace became the common diſturbers of it; and that where the Governor of a province prefers his own, and the private intereſt and views of his family, to his duty to his Sovereign and his fellow-ſubjects, there can be no Government.

The Aſſembly, convinced of this truth, on a retroſpect of the Proprietary conduct ever ſince the ſettlement of the province; of the perpetual diſputes between the two branches of the legiſlature; of the dangerous parties, tumults, and riots, occaſioned by them; and of the want of that ſecurity of perſon and property, for which men enter into civil ſociety,

determined,

determined, if poſſible, to get rid of theſe miſchiefs. Untainted in their loyalty (for, at that time, Eaſtern ſedition had made little impreſſion in Pennſylvania), they reſolved to petition his Majeſty to take the Government of the province under his royal care, by virtue of the contract which I have before mentioned to have been made with the firſt Proprietary. For this purpoſe they adjourned, and having adviſed with their conſtituents, they returned to their ſeats perfectly convinced, that they were acting agreeably to the *general ſenſe* of the people, the Proprietary dependents, and their Preſbyterian allies excepted. The petition was accordingly forwarded, and an agent ſent over to proſecute it. *This petition yet remains before his Majeſty, in Council, undecided.*

I cannot help here remarking, from a perfect knowledge of the ſtate of the province, that, had the people been gratified in this reaſonable petition, ſo conſiſtent with the intereſt of the Crown and their own ſafety, the province of Pennſylvania would not have been brought into the preſent rebellion. And had ſo rich and powerful a province, to which ſeveral of the Middle Colonies look up as

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the rule of their conduct, remained ſteady in its allegiance, there is every reaſon to believe, that others would have followed the example. Nor would the rebellion have extended further than the New England provinces †.

This petition for a change of the Government, from Proprietary to Royal, was truly

† The force of this argument will be evident, when it is conſidered, that, although the Congreſs voted by provinces, a ſingle Delegate of this province gave the caſting vote for American independence. Had this opulent and commercial province refuſed the American union, and taken the ground of accommodating the difference between Great Britain and America, there muſt have been a majority, which would have purſued the ſame meaſure. That majority would have influenced others. And it is much to be doubted, whether the pride of the Virginians and South Carolinians would not have been reſtrained. South Carolina, in the firſt Congreſs, was totally averſe to independence. However, it was upon theſe principles that the Author of theſe Reflections exerted his utmoſt endeavours to prevail on the Aſſembly of Pennſylvania to withdraw their delegation from the Congreſs. And in this he had certainly ſucceeded, had he not met with every poſſible oppoſition from the Proprietary party in the Aſſembly. The father-in-law of the then Proprietary and Governor (late Chief Juſtice of the province, and the leader of the Preſbyterian faction in the Middle Colonies), another judge of the ſame court, with every juſtice of the peace, and all the members under their influence, united with the Preſbyterian party in oppoſing him. And yet he failed in his attempt only by *a ſingle vote*.

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an unfortunate one. Unfortunate, as it did not meet with ſucceſs; and unfortunate, as it led the Proprietary to take from a number of worthy men who had ſigned the petition, and had been moſt active in the preſervation of the public peace, the offices of magiſtracy, and to ſupply their places with men averſe, not only to his Government, but to that of the Crown.

Heretofore the Preſbyterians had poſſeſſed little or no ſhare in the magiſtracy, which had been chiefly compoſed of Churchmen and Quakers. To acquire ſome ſhare of power, they thought the diſputes between the Proprietaries and their Aſſembly afforded a good opportunity. They, therefore, devoted themſelves throughout the province to the ſupport of Proprietary meaſures, however unjuſt and arbitrary. In return for their good ſervices, the Proprietary filled up the vacated offices with Preſbyterians; and to ſecure their future fidelity, he created a number of new magiſtrates, all of the ſame perſuaſion, to the excluſion of the Church and Quakers. From this unjuſt and impolitic conduct, it happened, that, at the time of the oppoſition to the Stamp-Act began, and ever ſince, to the

declaration of American independence, theſe men, diſaffected, from principle, to the Britiſh Government, formed the Proprietary magiſtracy.

When the ſtamped paper arrived, a mob was raiſed in Philadelphia, to prevent its landing. The Proprietary officers were inactive ſpectators. On the arrival of the Tea, when the agents of rebellion, from New England, had endeavoured to diffuſe its poiſon throughout the Colonies, mobs, headed by the Preſbyterians, were again excited; and, although trifling and inſignificant in their numbers, and eaſy to be ſuppreſſed, they were permitted to prevent the landing of the Tea, to tar and feather the loyal inhabitants, and among them an officer of the Cuſtoms whom they nearly murdered; and yet no eſſay was made to ſuppreſs them. The powers of Government, in the hands of the Proprietary and his dependents, were aſleep. The former diſcovered no concern about them, no fear of them, nor the leaſt deſire that the tumults ſhould be ſuppreſſed; and the latter were the abettors and promoters of the ſedition.

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The motives which governed the leaders of the ſedition were obvious; but, from what principles this political ſtupor in the Proprietary conduct aroſe, may be thought, by ſome, rather problematical. By candidly canvaſſing the actions of men, we may certainly arrive at their ſecret wiſhes and deſigns, and ſolve the problem. We cannot reaſonably impute their apparent indolence and indifference to a ſenſe of duty, or to a deſire to ſupport the rights of the State, for this would have rouſed their powers into exertion. Did it not then ariſe, partly from the wretched and confuſed form of Government, which they had themſelves eſtabliſhed, but principally from their, as yet, unſatisfied ambition? that ambition which had, upon ſo many occaſions, rendered the Government more weak and confuſed than it was in its own nature. Ambition is often the product of wealth. It grows in a poor as well as in a rich ſoil. It is to be found in weak as well as great minds. The immenſe wealth of the Proprietaries naturally produced their ambition, which was perpetually ſtimulated, and kept in vigour, by their unlimited powers of dominion; and nothing leſs than perfect independence on the Britiſh Government could ſatisfy it.

There is ſomething more than conjecture in this aſſertion. For, weak as their power and influence were, they will not deny, that, had they exerted their authority at firſt, the inſignificant mobs, compoſed of a few men, might have been eaſily ſuppreſſed, and the public peace preſerved. Friends to public order, and men attached from principle to their Sovereign, were not wanting in this province. They ever formed a great majority of the people. Had theſe men been called on by the officers of juſtice, or only informed, that they would have been ſupported by the powers exiſting; or had they not perceived, that the officers, holding their commiſſions during the pleaſure of the Proprietaries, and attached to their intereſt, were not only inactive in oppoſing thoſe tumults, but were the promoters of them, the riſing ſedition could not have broke out into open rebellion in this province.

We muſt not, therefore, conclude, that the triumph of the ſeditious, in this Government, was altogether owing to the dipoſition of a majority of the people, or weakneſs of the Government; but, on the contrary, that

Proprietary ambition, which could not bear the character of a nominal dependence, was a principal cauſe of the want of exertion. Royal inſtructions had been often ſent to Proprietary Governors, as well as to thoſe immediately dependent on the Crown. The Aſſemblies, on ſeveral occaſions, had preſumed to appeal to the Crown from their arbitrary and unjuſt conduct; the Britiſh legiſlature itſelf had paſſed laws incompatible with the independent powers and ſupreme juriſdiction of the Proprietary Government; and ſeveral attempts had been made by the Crown to reſume their Governments, and in one inſtance, it was reſumed. Theſe were intolerable checks to the boundleſs views of Proprietary intereſt and ambition, which, neither their immenſe eſtates, nor their extenſive power, could gratify. Not content with being already the moſt wealthy ſubjects in the Britiſh dominions, they wiſhed to become more ſo; and, not content with a nominal dependence on the Britiſh State, they wiſhed to become perfect and abſolute independent Princes. But this could not be, while the ſupremacy of Parliament, and ſuperintend-

ence of the Crown, extended to their provinces. An oppoſition, therefore, which afforded a proſpect of removing theſe obſtructions to their ambition, could not be diſagreeable to them. Their wiſhes, and their intereſt, they thought, led them openly to unite in it; their fears alone prevented it. Should the oppoſition fail in the attempt, they concluded, that, by not openly ſupporting it, they ſhould ſave their Government. Should it ſucceed in eſtabliſhing the claim of independence, they believed their Government would remain, and its independence be ſecured with the other States.

We can account for the conduct of the Proprietaries of this province, on no other principles. What leſs than theſe motives could induce the Proprietary, who was in actual poſſeſſion of the powers of Government, to ſee the riſing mobs, without calling on his officers of juſtice to ſuppreſs them, and even, without ſignifying on the occaſion the leaſt diſpleaſure? Why did he ſuffer a number of the judges of his courts, ſuperior as well as inferior, and other officers holding commiſ-

commiſſions during his pleaſure, openly and actively to ſupport the oppoſition, without taking from them their commiſſions, or even reprimanding them for their treaſon? We have ſeen, that ſigning a petition to the Crown againſt the Proprietary Government, was deemed a ſufficient cauſe to remove a number of worthy men from their offices. Surely the ſeditious conduct of his magiſtrates, againſt the Government of the State, ought, at leaſt, to have produced the ſame meaſure. Why did another of the Proprietaries, who held an eſtate, in remainder, in the Government, publicly avow the meaſures of the oppoſition both in Britain and America? Deliberate omiſſions, and breaches of ſuch important duties, muſt be founded in ſtrong motives; and what motives more powerful than private intereſt and ambition? And what was there left to gratify the ambition of men already poſſeſſed of ſuch unlimited powers, but a deliverance from royal inſtructions, and a perfect independence on the State?

But art, where its object is not juſt and laudable, often becomes a ſuicide. Such was the fact in the preſent inſtance. The deſign of the Proprietaries were not only unattained,

but conſequences the moſt ruinous to themſelves and families attended theſe flagrant breaches of duty. They did not believe, that the ſame licentious ſpirit which intended to throw off their obedience to Parliamentary authority, meant alſo to overturn Proprietary Government, but rather imagined, that its feeble fabric would gain ſtrength by the conteſt, and ride out the ſtorm. They did not reflect, that their own Government, from its unjuſt and arbitrary conduct, had become more unpopular than that of the Crown, which was generally revered by all, their own dependents and the Preſbyterians excepted; and, therefore, while the conduct of the mobs, committees, and conventions, reſted only in treaſonable oppoſition to the authority of Great Britain, they remained inactive ſpectators. But as ſoon as theſe lawleſs combinations diſcovered a deſign to overturn their own Government, every nerve was ſtrained to ſave it. They then exerted their whole influence to ſuppreſs the convention, and to take the buſineſs out of their hands. For this purpoſe, a legal Aſſembly was called; and in order to ſecure a determination of the queſtion in their favour, in direct breach of a royal inſtruc-

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tion, an act was paſſed to increaſe the number of the members from the Preſbyterian counties, which were thought moſt favourable to their intereſt. Theſe members, it was hoped, would turn the ſcale in favour of Proprietary Government; but it proved a miſtake. The reſult of the buſineſs was, an utter demolition of all their power, and the eſtabliſhment of a perfect democratical State.

Thus the Proprietary ſcheme to ſave their Government proved abortive. Never were there men, who have acted a part ſo undutiful to their Sovereign and country, or who have been ſo blind to their own intereſt. For, however low their lawleſs ambition might be brought by the loſs of their Government, it was to be reduced yet lower; for this loſs was ſoon followed by that of their immenſe property †. The ſame republican ſpirit which they had at firſt countenanced and foſtered, as ſoon as the new State was eſtabliſhed, paſſed an act for applying the Proprietary eſtate to public uſes, allowing to the family the ſmall pittance of 120,000l. to be paid in Congreſs money, and that in four yearly payments, to commence after the independence of America ſhould be eſtabliſhed.

† See the Appendix.

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Thus have Proprietary power and intereſt produced, and ſharpened, the inſtrument of their own ruin. From hence, both Miniſters and Proprietaries may learn a leſſon of important inſtruction: the former, that ſuch independent powers, and ſuch immenſe property, cannot be lodged in the hands of a ſubject with any degree of ſafety, either to the peace of the State, or of the inferior ſociety; and the latter, if they have any judgment left, reſpecting the ſecurity of their property, muſt be convinced, ſhould the province ever be reduced to the peace of the Crown, that they are competent, neither to the preſervation of its peace, nor even to protect their own powers or eſtates from uſurpation and ruin.

CHAP. IX.

On the Charters of Rhode Iſland and Connecticut.

I HAVE before proved, that it is neceſſary, in the conſtitution of all inferior ſocieties, that they ſhould be formed on principles ſimilar to, and correſpondent with, thoſe upon which the Government is eſtabliſhed, becauſe, in this policy, their union and ſubordination to the State conſiſt. Without a due attention to this law, they can be fitted neither to receive the directions of the ſupreme authority, nor to yield obedience to them. But, on the contrary, they muſt ever be in continual oppoſition to its principles and meaſures, weaken its powers, and in the end bring on its diſſolution.

We have ſeen, in the Proprietary Charters, this law entirely diſregarded; and all the powers of the State conferred on a part of its ſubjects *for ever*, with full authority to alter and modify them at pleaſure, without the leaſt

leaſt reſtriction. In conſequence of theſe patents, we have alſo ſeen, that the Proprietaries, *in the plenitude of their power*, have formed their inferior Governments without the leaſt judgment or diſcretion, without the leaſt regard to the fundamental laws of the State, or to thoſe principles by which alone the obedience and ſubordination of the people could be eſtabliſhed: inſomuch, that the ſupreme authority of the State, and ſuperintendence of the Crown, are entirely loſt in the independence of their conſtitutions.

Upon a view of the Charters of Rhode Iſland and Connecticut, we ſhall find, that Charles the Second granted them on principles equally inconſiſtent with his truſt, and yet more ſo with any relation or ſubordination to the Government of Great Britain. For, if he conſtituted in the provinces of Maryland and Pennſylvania principalities with unlimited powers, by theſe Charters, he eſtabliſhed in Connecticut and Rhode Iſland independent democracies, without a ſingle principle of monarchy or ariſtocracy mixed in them.

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The people of theſe provinces were emigrants from Maſſachuſets Bay, from whence they had been either baniſhed, or had fled, to avoid the perſecution of their fanatic brethren. They had lived upwards of thirty years, under Governments formed by themſelves, without any authority from the Crown, according to their own political ſentiments. They knew no ſubordination to, nor political connection with, the State.

Various were the motives which led theſe Britiſh ſubjects to wiſh for ſome authority from the State to ſupport their rights of Government; but principally, the dread of the encroachments and violence of their Maſſachuſets neighbours. They accordingly ſolicited for, and obtained, Charters from Charles the Second; Connecticut in 1662, and Rhode Iſland in 1663. Although the forms of their Governments were not left to the diſcretion and modification of the patentees, as in the caſes of Maryland and Pennſylvania, yet it is very probable, they were ſettled agreeably to their own ideas of polity; and that little of the royal conſideration and judgment was exerciſed upon them. Both of them were as

diſſonant

diſſonant to the monarchical ideas of Charles, as they were conſiſtent with the republican principles of the patentees. The grants may be ſaid to be mere confirmations of thoſe ſyſtems of popular rule, which the people themſelves had eſtabliſhed while they thought themſelves independent.

The perſons named in the ſeveral Charters, and ſuch as ſhould be " admitted free of the " company or ſociety," were incorporated into bodies politic; one, by the name of " The Governor and Company of the Engliſh " Colony of Connecticut in New England;" the other, by the name of " The Governor " and Company of the Engliſh Colony of " Rhode Iſland and Providence." For the Government of each of theſe inferior ſocieties, a Governor, Deputy-Governor, and Aſſiſtants, were appointed by the Charter. But theſe officers, for ever after, were to be annually elected by a General Court or Aſſembly. This Court was to conſiſt of the Governor, Deputy-Governor, and Aſſiſtants, and a number of Delegates elected by the towns. The Governor, Deputy-Governor, and all other officers, judicial, executive, and mili-

tary, were to be annually appointed by this general Aſſembly; but the Delegates, or Repreſentatives of the people, who formed a part of the Aſſembly, were to be elected every ſix months. And on this popular Aſſembly, or General Court, deciding all matters by a majority of votes, all the legiſlative, executive, and federative rights, powers, and privileges, were conferred. They were empowered to make all manner of laws for the Government of the Colony; all that were neceſſary for regulating the order of the Government, for directing the morals of the people, for protecting them from foreign invaſions, and for every other purpoſe that can be neceſſary to an independent civil ſociety. And they were further authoriſed to ſettle "the forms and ceremonies of Government "and magiſtracy, in what manner, and in "what ſtyle," they pleaſed, however contrary to the modes and principles eſtabliſhed in the Britiſh Government: So that they might, if they thought proper, have inſtituted the ſame forms and ceremonies of Government and Magiſtracy as are to be found in China or Japan.

Thus

Thus were all the legiſlative and executive rights, which are neceſſary to the conſtitution of an independent State, conferred on a democratical Aſſembly. The civil and military rights of the Crown are granted in terms ſo indefinite, as to exclude all poſſibility of its ſuperintendence; and the rights of the King, Lords, and Commons, are ſo completely tranſferred as to render no one act or regulation of theirs neceſſary to the ſafety or happineſs of the people. The laws and ordinances to be made by the General Court, are to be ſtrictly obeyed; while there is no mention of any obedience due to thoſe of the State. There is, indeed, a proviſion, that the laws of theſe corporations ſhall not be repugnant to the laws of England. But this is yet more nugatory than the like proviſions in the Proprietary Charters. For theſe politic bodies are not even directed to tranſmit their laws to the Crown for confirmation or repeal. Nor is there any appeal eſtabliſhed from the courts of juſtice to his Majeſty in Council; nor any mode ſettled, by which the Crown or Parliament can be regularly informed of their tranſactions. So that the Crown and Parliament muſt ever remain in the dark reſpecting their conduct.

Where

Where then can be the ſubordination of theſe members of the politic body to their ſupreme head, when they are rendered unaccountable and independent, ſtand in no need of its direction or aſſiſtance, and are competent in themſelves to the relief of all their own wants and neceſſities. Or of what uſe can ſuch a member be to the State? No more than an amputated limb to the human body. But it may be much more miſchievous, as manifeſt experience has proved.

Poſſeſſed of theſe unlimited powers, and educated in republican principles, they conſider themſelves diſcharged from all ſubordination to the Britiſh Government, and aſſume all the rights of independent States. Indeed, had education been out of the caſe, theſe powers were irreſiſtible temptations to the meaſure. But where the natural ambition of men is worked upon by the influence of both principle and education, it is impoſſible that it ſhould otherwiſe happen. Such is the fact. Theſe independent corporations have adhered to the powers of their Charters, or departed from them at their pleaſure. The only rule which has directed their

conduct, has been that of their own ſupreme will. Of this truth, the political hiſtory of theſe colonies affords a continued ſeries of proofs.

They were forbid, by their Charters, to make laws contrary to the laws of England. Yet, in many inſtances, their laws have born a nearer reſemblance to the code of the Jewiſh theocracy, than to that of the Engliſh conſtitution. In ſome, where life was concerned, the judgment of the court was to be founded on the " rule of the word of God." The Charters conferred no power to inflict capital puniſhment; yet, that puniſhment they inflicted on idolators, blaſphemers, conſpirators againſt their own Government, and even on diſobedient and rebellious children. They inſtituted trials by juries, but, in effect, deprived the ſubject of that ineſtimable privilege, by giving the court an abſolute power over their verdicts. They adminiſtered oaths of allegiance to their Government, but omitted thoſe of ſupremacy and allegiance to the State, although their Charter expreſsly enjoined it. The Charter granted to the people liberty of conſcience in the fulleſt manner,

yet they denied the exercise of the religion of the Church of England, and compelled all the people, under a penalty, to conform to their own modes of worship. They violated the laws of trade and navigation openly and without hesitation, and in Rhode Island, they would not suffer their Governor to take the oath injoined by the act of Parliament, for carrying them into execution. They would not suffer any customs or duties to be collected for the use of the Crown, because, they conceived, that they were able to raise the aids necessary to their own protection, and because those duties were granted by the Charter. They ever have treated Royal instructions with high contempt, because they held them inconsistent with, and violations of, the unlimited and independent rights of their Charter. They would not transmit their laws for confirmation or repeal, nor allow appeals from their courts of justice, because no direction to those purposes was contained in the Charter; and, because they thought such powers in the Crown were incompatible with their independent rights.

When we enquire into the state of the peace and order of these democratical institutions,

we find them a ſcene of tumult and confuſion. The annual election of the numerous officers of Government, and that of the Delegates in Aſſembly, every ſix months, induce perpetual canvaſſing and ſolicitations for offices. One election is ſcarcely ended before the competition and buſtle for the next commence. Some men are ſtriving to continue in their offices, others to ſuperſede them. Hence, theſe colonies are the perpetual ſcenes of parties, public feuds, broils, and breaches of the peace, which altogether deſtroy the public tranquility. All that awe and reſpect which are the great ſupport of Government, and which are neceſſary to be paid by the lower claſs of people, to perſons in office, are wanting. The Governor and Magiſtracy of the colony are upon a level with John the Farmer, who follows the plow for his daily ſubſiſtence, and whenever they meet, the firſt ſalutation of reſpect proceeds from the Governor or Magiſtrate; if not, he loſes the Farmer's vote and intereſt at the next election. The popular man, though not worth a groat, or the man who commands a number of votes, however undignified by morals, education, or office, is the man of rank to whom the Officers of Governmer t

muſt

muſt pay reſpect and honour, or loſe their offices. For the ſame reaſon, juſtice is precarious, and ſeldom fails to preponderate in the ſcale of the factious and popular, however unjuſt their pretenſions. To the intereſt and influence of ſuch men, the Judges are indebted for their commiſſions, and they are liable, every year, to be removed by them. A fear of that removal operating on the Judge corrupts his judgment, and renders his deciſions erroneous and unjuſt.

Nor are theſe all the miſchiefs which naturally ariſe from the unlimited powers and illegal conſtitutions of theſe Governments. Frequent conteſts for ſupremacy happen, in Connecticut, between the civil and eccleſiaſtical powers. Indeed, it is difficult to determine, whether the laity or the clergy governs the ſociety. The churches, or the miniſters and communicants, exerciſe a right to puniſh their diſobedient and unworthy members. From their deciſions, there is a right of appealing to the Aſſociations, and from them to an eccleſiaſtical tribunal, yet higher, the Conſociation. By the platform, which contains the ſyſtem of their eccleſiaſtical do-

mination, the judgment of the Conſociation muſt be final. But it often happens, that the culprit who thinks himſelf injured, will take the liberty of appealing to the General Court or Aſſembly. The appeal is generally received and determined, notwithſtanding the claim of final deciſion in the Conſociation. This is eſteemed a high profanation of the ſacred rights of the platform. And the miniſters of the churches, who, with a number of the communicants, form the Aſſociations and Conſociation, never fail to revenge themſelves upon the Governor, Deputy Governor, Aſſiſtants, and Delegates, (who had preſumed to profane the rights of the church) by preventing their being choſen at the next election. A layman therefore, who wiſhes to obtain an office, muſt apply to the Miniſter for his recommendation, and before he can obtain it, muſt promiſe not to violate the ſacred ordinances of the Platform. And yet ſuch is the love of power in the minds of men, that the new members are no ſooner elected than their promiſes are forgot; and fond of controuling the ſupreme power of the Conſociations, they proceed, as uſual, to determine the appeals. Hence, perpetual quarrel, and alternate domination, between

tween the civil and eccleſiaſtical juriſdictions. During the firſt ſix months after an annual election, the power of the laity prevails; and during the next ſix months before the enſuing election, that of the Miniſters dominates. Thus the two ſcales, in this ſtrange jumble of policy and dominion, are perpetually on the ſeeſaw.

One inſtance more, of the illegal and ſeditious conduct of the people of Connecticut, ought not to be omitted. The Charter directs, that all the Officers of Government ſhall be appointed, annually, by "the greater part of "the company," or freemen. From the date of the Charter to the time of the Stamp-Act, the candidate who had the majority of votes had been ever adjudged duly elected. But, when that act was paſſed, a novel and unprecedented conſtruction of the words of the Charter was made to ſerve the purpoſe of oppoſing it. Governor Fitch, a gentleman of real integrity and loyalty, had given offence by taking the oaths required by the act; and yet, at the enſuing election, he retained ſo much influence as to have more votes for the office of Governor than any other candidate, and, conſequently, was duly

elected according to the Charter. But the Committee of Elections, contrary to all former uſage, and the legal conſtruction of the Charter, reported to the General Aſſembly, that no Governor had been elected by the freemen; for that, although Mr. Fitch had a greater number of votes than any other candidate, yet he had not more than all the other candidates together. This report was approved, and the General Aſſembly, uſurping a power not conferred by the Charter, declared Mr. Fitch not duly elected, and appointed Mr. Pitkin the Governor, on whoſe fidelity they could rely in oppoſing the act. Mr. Fitch was then elected Deputy Governor, by a great majority of votes. The Committee made a like report, and the General Aſſembly again rejected his election, and appointed Mr. Trumbull, the preſent rebel Governor, the Deputy Governor, although he had *a leſs* number of votes than any other candidate.

At the election in 1768, the people were in great diviſions and confuſion. Trumbull had 2600, Fitch 2550, and ſixteen others had each about 2000, in the whole 37,150 votes. The Committee reported the numbers of votes,

votes, for each candidate, to the General Court. Mr. Trumbull was a man whoſe ſeditious principles ſuited their own. The late expoſition of the Charter was now to be reverſed. The treaſonable purpoſe for which it had been made was fulfilled; and Mr. Trumbull declared duly elected by the freemen.

James the Second, finding theſe colonies in a ſtate of diſorder and confuſion, without ſubordination, and tending faſt to independence, ordered Sir Edmund Andros, his then Governor of Maſſachuſets, to demand a ſurrender of their Charters. That of Rhode Iſland was accordingly made in the year 1686, by the Governor, Deputy Governor, and Aſſiſtants, without any coercion. The Charter was cancelled in form, and a new ſyſtem of Government, under the royal authority, immediately inſtituted in its ſtead. That of Connecticut followed in 1687, when it was delivered up in form by the General Court, without any threats or menaces on the part of the King, ſave that of calling the Government to anſwer, in a due courſe of law, for its multifarious delinquencies and miſdemeanours. A teſt which their rulers did not

chooſe,

chooſe, for the moſt weighty reaſons, that their conduct ſhould undergo. But one Samuel Wadſworth, a factious and enthuſiaſtic republican, at the head of a mob, ruſhing into the Court, ſeized on the Charter, after the ſurrender, carried it off without oppoſition, and carefully concealed it in the hollow of a tree. However, this act of violence did not prevent the royal Governor from aſſuming the Government, as he had done that of Rhode Iſland.

Under royal authority, theſe colonies continued until the year 1689, although not ſatisfied, yet without any open reſiſtance, when hearing of the inſurrection of the people of Maſſachuſets, mentioned in the next Chapter, and the conſequent revolution, they reſumed the Charter which they had formerly ſurrendered, without any authority from the Crown.

No ſooner did theſe republicans return to the powers of their Charters, than their former tumults and confuſion were renewed. Their old forms of Government, with their former code of laws, habits, manners, attachments,

tachments, and averſions, were adopted. Their former anarchy they preferred to royal rule, becauſe they had been educated in, and accuſtomed to it. The ſhort duration of the Royal Government had not made impreſſions ſufficiently ſtrong to conquer the force of habit, nor to create a reliſh for the more eligible bleſſings of order and peace.

Under this confuſed Government, the people of Connecticut and Rhode Iſland have remained ever ſince, unhappy and miſerable, equally diſcontented with their own rule, as intolerant of their nominal ſubordination to the Britiſh State.

What could be expected from a people educated in political principles ſo repugnant to thoſe of the Britiſh Government, but diſſaffection and averſion to it? What, from a people poſſeſſed of unlimited powers, but a thirſt for independence? Is there a politician who conſiders the propenſities of the human mind, and the powerful force of education and habit, who can believe that unlimited powers will not create a deſire of independence,

ence, or that a people, educated in the ſchool of democracy, can, in the nature of things, be attached to the principles of a mixed monarchy? The fiſh ſpawned and bred in muddy water, abhors the chryſtal ſtream. The Spaniard, or the Turk, will not change his ſlavery for the moſt refined and beſt regulated freedom. Nor could the adventurous Omiah, impreſſed with the ſtrong deſire of information and knowledge, be prevailed on, in a few years, by the wonderful improvements and refined enjoyments of art, not to return to the principles and habits of his education.

From the premiſes, we muſt conclude, that a Government which intends to preſerve the union and concord of its members, upon which its own ſtrength and ſafety depend, muſt attend to their conſtruction and education, by forming them on, and conſtantly maintaining in them, thoſe principles which correſpond with, and which will always ſupport it. But in theſe inferior corporations, as they are eſtabliſhed by their Charters, when we look for a political and ſubordinate connection, either with the ſupreme authority

of

of the State, with the powers of the Crown, or with any one of their fellow-members, we find it does not exiſt; and when, for the great purpoſes, to obtain which, men enter into civil ſociety, namely, perſonal ſecurity and juſtice, we find them altogether unattained; and that the condition of the people is little better than it would be in a ſtate of nature. Indeed, theſe ſtrange ſyſtems of Government, give us the following abſurd ideas.

An inferior member of a State, without ſubordination or ſubjection.

A Government without order, peace, juſtice, or ſafety.

A civil Society without a Head, or rather all Head, or a many-headed MONSTER.

CHAP. X.

On the Maſſachuſſets Charter.

I HAVE before made ſome remarks on the firſt Maſſachuſſets Charter †; enough to ſhow that its powers were entirely democratical; and that the grantees were veſted with all the unlimited rights of an independent ſovereignty. This being the fact, it was natural to expect, that the people educated under it, however unprejudiced againſt any other particular form of Government, would, in a little time, become attached to democracy, and averſe to a mixed monarchy; and that their extenſive powers would create a deſire of abſolute independence. But this is only a part of the fact. The firſt ſettlers of this province carried over with them a ſtrong averſion to the principles of the Britiſh Government. They were ſome of thoſe ſectaries, who, not content with that generous relief from Popiſh ſuperſtition and tyranny, which the Reformation gave them,

† See Chap. VI.

became

became intolerant of all reſtraint in regard to the forms and ceremonies of religion, and in their rage for further reformation, broke off from the eſtabliſhed church.

The Reformation which began in the reigns of Henry the Eighth, and was improved and eſtabliſhed in that of Elizabeth, was undoubtedly a real good; and had it ſtopped there, or paſſed only a little further, it muſt have produced many bleſſings to mankind. But a rage for further reformation ſucceeded, and ſoon broke out into a variety of ſects, who diſſented from the Church, and became the reformers of the Reformation. But ſome of theſe ſectaries, forgetting that the ſyſtem of Chriſtianity was founded in univerſal benevolence, adopted principles which excluded all benevolence, and utterly ſubverted thoſe of the religion they meant to reform.

Among theſe ſectaries were the Browniſts, Congregationaliſts, Puritans, and Independents; theſe different denominations of Chriſtians, differed more in name than in ſubſtance. They all agreed in the following tenets: "That all power, as well

" well in civil as eccleſiaſtical affairs, could " only be lawfully placed *in the people*; that " they could know no *temporal King*, be- " cauſe Jeſus alone was their King both in " ſpiritual and temporal affairs; and that " they, who were *the alone worthy*, and the " *alone elect*, were his agents and vicegerents, " who were to do his work upon earth, and " in the end, *alone* to receive the benefits of " his crucifixion and death." Tenets which moſt effectually deſtroyed that which renders the Chriſtian religion ſuperior to all others, and which were as pregnant with perſecution as thoſe of the Church of Rome: and tenets which rendered their ſubjection to a mixed monarchy, and indeed to every other kind of Government but democracy, in their opinion, immoral and criminal. Poſſeſſed of theſe ſeditious principles, they ſuffered under thoſe penal laws, which, in the infancy of the Reformation, perhaps were neceſſary to its eſtabliſhment; and to guard it againſt the power and influence of the See of Rome, its conſtant enemy. Their ſufferings, their enmity to monarchy, and a deſire to eſtabliſh an independent Government, under which their own

religion

religion ſhould be alone protected, led them to this province.

The conduct of theſe fanatics, after their arrival in America, will abundantly prove, that this was their great deſign. So much of it as is neceſſary to my ſubject, I ſhall briefly lay before the Reader; referring him for a more particular information to the hiſtories of Governor Hutchinſon, a native of the province, who wrote from the beſt information, derived from many original papers, which he had with great induſtry collected, and from the records of the province; and of Mr. Chalmers, who has had the aſſiſtance, not only of former hiſtorians, but of the provincial records in Britain.

From theſe hiſtories, and the authentic documents to which they refer, it will appear, that the emigrants to this province, before they had obtained their Charter, conſidered themſelves as in a ſtate of nature. Although they were Britiſh ſubjects, who had ſettled on Britiſh territories annexed to the realm, they thought themſelves diſcharged from the Britiſh Government, and its laws. They formed

themſelves into a body politic, without the leaſt authority from the State, and aſſumed all the legiſlative and executive rights of an independent ſociety. The Government which they eſtabliſhed was entirely democratical, and the rule of their church, congregational. In both caſes the power was lodged in the people.

When they had obtained a charter, they made its directions the rule of their conduct, or departed from them, on all occaſions, as it ſuited with their deſigns of independence in Church and State. Religion being the great motive of their emigration, they immediately eſtabliſhed their own fanaticiſm. This was done by a "covenant with the Lord, and "one another." The two great articles were, "That they would walk in all their "ways, as he ſhould be pleaſed to reveal "himſelf to them; and that they would not "deal oppreſſingly with any *wherein they* "*were the Lord's ſtewart.*" And as none but thoſe who were of their faith could be of his flock, none others were to be admitted; of this faith the Elders were to be the arbitrary judges.

In

In the ſeveral emigrations there were a number of people belonging to the Church of England. Theſe men juſtly conceived they had a right, under their Charter, to liberty of conſcience, as well as thoſe enthuſiaſts. And as they could not conform to the bigotted faith and eccleſiaſtical tyranny ſo lately eſtabliſhed, they formed a meeting according to the rites and ceremonies of the Church of England. But this was conſidered as an act of nonconformity, and inconſiſtent with their deſign of eſtabliſhing an excluſive and independent church. It was declared ſeditious, and tending to mutiny, and the poor Epiſcopalians were baniſhed and ſent to England. And thus the eſtabliſhed Church of the nation was, with a preſumption and injuſtice unparrallelled, ſuppreſſed in its infancy.

This act was immediately followed by a law, declaring, that in future none ſhould be admitted to the freedom of the body politic, but ſuch as were members of their own church. By this law, directly contrary to the words of their Charter, which gave to Britiſh ſubjects, of every denomination of Chriſtians, a right to emigrate and ſettle

within its limits, a major part of the people, then reſident within the province, was deprived of their civil rights. This law continued in force upwards of ſixty years, until the diſſolution of their Charter.

But further, to ſecure the Government and territory of the province to themſelves, "the "only choſen people of God," they paſſed another law, forbidding all perſons to entertain in their houſes any ſtrangers coming to reſide among them, without the aſſent of one of the ſtanding Council, or two other Aſſiſtants. Thus the foundation was laid for thoſe cruel perſecutions which gave riſe to the colonies of Connecticut and Rhode Iſland, to the baniſhment and death of the Quakers, and to the oppreſſion of the Baptiſts, which continued until the date of their late declaration of independence.

The ſame motives which induced them to pay no regard to their Charter, in ſettling their eccleſiaſtical rights, led them to diſregard it in matters of Government, and totally to reject the principles of their Parent State. Inſtead of governing the ſociety by the general ſtatute and common law, or conforming to

their

their principles, as the Charter enjoined, they enacted new laws totally repugnant to them. Their code was founded on the laws of Moſes, and much more ſanguinary than the laws of England; they held, that the ſtatute and common laws were of no force in their ſociety, unleſs extended by its Legiſlature. They made a law to puniſh ſedition and treaſon againſt their own Government, but omitted to puniſh ſedition or treaſon againſt their Sovereign.

During the civil war, theſe fanatics, as far as their infant State enabled them, ſupported the pretenſions of the Parliament and of Cromwell. Men or money they had not to ſpare. But they aſſured the Parliament of their good wiſhes and prayers for its ſucceſs againſt the King; and their agents, with great induſtry and intrigue, fomented the ſeditious, becauſe the deſign of the Puritans in England exactly correſponded with their own. The aim of both was, the ſubverſion of the Britiſh Government, and to ſet up one on their own enthuſiaſtic and democratical principles.

As ſoon as the uſurpation was eſtabliſhed, the General Court, no longer dreading the powers of royalty, concluded, that the æra of their independence was arrived, and that a little temporary ſervility to a Parliament, whoſe principles were ſo ſimilar to their own, would ſoon obtain it. A kind of political courtſhip commenced between them. Mutual favours were conferred, but with very different views; on the part of Parliament, with deſign to ſupport its authority over the Colony; and on the part of the Coloniſts, by a temporary ſubmiſſion to prevail on the Commonwealth to ſuffer them to enjoy their beloved independence.

The Parliament paſſed a law, exempting the New England Colonies from all cuſtoms and duties on goods imported to, or exported from them. This law the General Court ordered, without heſitation, to be entered in their minutes, " as a proof of the gracious " favour of Parliament." And, although they had not paſſed any act to puniſh ſedition or treaſon againſt the Kings of England, during their Government, they now ordered, that " whoever diſturbed the peace of the

" *Common-*

" *Common-wealth*, by endeavouring to draw " a party, under the pretence that he is for " the *King of England*, ſhall be proceeded " with either *capitally*, or otherwiſe."

But theſe mutual favours between the greater and leſſer uſurpations did not extend ſo far as to induce the latter to give up their views of independence in Church and State. This inferior ſociety, ſays Mr. Chalmers, " in conformity to its accuſtomed principles, " acted, during the civil wars, almoſt alto- " gether as an independent State. It formed " leagues, not only with the neighbouring " colonies, but with foreign nations, without " the conſent or knowledge of the Govern- " ment of England. It permitted no appeals " from its Courts, to the judicatories of the " ſovereign State, it refuſed to exerciſe its " juriſdiction *in the name of the Common-* " *wealth of England.* It aſſumed the Go- " vernment of that part of New England " which is now called New Hampſhire, and " even extended its powers further eaſtward " over the province of Main; and, by force " of arms, it compelled thoſe who had fled " from its perſecution beyond its boundaries

" into the wilderneſs, to ſubmit to its autho-
" rity. It erected a Mint at Boſton, impreſ-
" ſing the year 1652, as the æra of their in-
" dependence; and this practice was con-
" tinued until the diſſolution of its Govern-
" ment."

All theſe independent powers, utterly inconſiſtent with any ſubordination to the Common-wealth, were exerciſed by the General Court, during its continuance. And thus, by a little temporiſing, the General Court outwitted even the cunning of Cromwell himſelf. And having thus acted as a State independent of the authority of Oliver, they declined, upon his death, to acknowledge that of Richard his ſucceſſor.

The reſtoration of Charles was as unexpected as it was diſtreſſing to theſe fanatics. If they received the news of the uſurpation with inexpreſſible joy, they received the account of the Reſtoration with as much fear and diſtreſs. They dreaded, from the power of Charles, a total loſs of their Charter rights, as a juſt puniſhment for their diſregard of them, for their uſurpation of other rights not granted,

granted, for their ſuppreſſing the Church of England, and for thoſe cruel perſecutions and puniſhments which they had inflicted on all perſons who differed from them in matters of religion; and yet, their fondneſs for independence, and enmity to monarchy, for a time, prevailed over their fears. For, although they were, ſo early as in July 1660, perfectly aſcertained of the Reſtoration of Charles, they, under various pretences, declined to proclaim him until Auguſt 1661. What a contraſt did this conduct exhibit to that of Virginia and Maryland? Theſe provinces no ſooner heard of the Reſtoration of their Sovereign, than they proclaimed him with a joy and feſtivity which demonſtrated their ſincerity and loyalty. But there was another circumſtance which further diſcovered their enmity to Royalty. Whaley and Goffe, two of the regicides who fled to this province for ſafety, were "courteouſly received by the "Governor," and treated by the people with univerſal kindneſs, until the warrant arrived for apprehending them.

Theſe things were known to Charles, and yet, with unexampled tenderneſs, he endeavoured

deavoured to reclaim them to their duty as ſubjects. He promiſed them a confirmation of their Charter, pointed out the inſtances in which they had violated their public duty, and required, that they would review their ordinances, and reform their conduct. But this lenity and royal moderation had no effect on the ſpirits of men big with an inſatiable thirſt for independence both civil and eccleſiaſtical, unleſs it was to render them more bold in their lawleſs courſe of governing the province.

A conduct ſo perverſe and wicked at length wore out the patience of the Britiſh Court. A *quo warranto* was iſſued againſt the Charter, and ſuch proceedings were thereupon had, that, in the year 1684, it was declared forfeited in the High Court of Chancery. The reaſons aſſigned in the writ for this forfeiture, are ſo juſt, ſo conſonant to law, and ſo deſcriptive of the lawleſs and independent deſigns of the people, that I cannot omit them. They were, " 1. That they, the Ge-
" neral Court, aſſume powers that are *not*
" *warranted* by the Charter, which is exe-
" cuted in another place than was intended.

" 2. That

" 2. That they make laws *repugnant* to the " laws of England. 3. They levy money on " ſubjects *not inhabiting* the colony. 4. They " impoſe an *oath of fidelity to themſelves* with- " out regarding the *oath of allegiance to the* " *King*. 5. They refuſe juſtice, by not al- " lowing *appeals to the King in Council.* " 6. They oppoſe the act of navigation, and " *impriſon the King's officers for doing their* " *duty*. 7. They have eſtabliſhed a naval " office, with a view to *defraud the Cuſtoms.* " 8. No verdicts are ever *found for the King* " in relation to cuſtoms, and the Courts im- " poſe coſts on the proſecutors, in order to " *diſcourage trials*. 9. They levy cuſtoms " on the importation of goods *from England.* " 10. They do not adminiſter the *oath of* " *ſupremacy*, as required by Charter. 11. " They have erected a Court of Admiralty, " *though not impowered by Charter.* 12. " They diſcountenanced *the Church of Eng-* " *land.* 13. They perſiſt in coining money, " though they had *aſked forgiveneſs for that* " *offence.*"

From the time of this forfeiture, to the Revolution in England, the province was governed

governed by the Royal authority. The powers of Charles and James were arbitrary, yet they were exerciſed over the Colonies with great moderation and juſtice; very different from what they meditated over the ſubject in Britain. The people poſſeſſed what they had never enjoyed before, equal liberty of conſcience, more internal peace and juſtice, and a greater ſecurity againſt its foreign enemies. And yet theſe reſtleſs ſpirits, intolerant of all rule, except that which agreed with their fanatic principles, no ſooner heard of the Revolution, than they entered into open rebellion. They ſeized on the perſon of the Governor and all his officers, and compelled him to ſurrender up the Government into their own hands.

The Royal Government being thus diſſolved, after the example of their independent brethren in England, at the time of the uſurpation, they appointed "a Committee "of Safety," who publiſhed a manifeſto in vindication of their rebellion. This Committee, ſoon after, called "a General Court, "who reſolved to reſume the Government "according to their Charter rights." They were

were now in poſſeſſion of the great object of their purſuits, independence; and, therefore, had no thoughts of proclaiming the Prince of Orange. But they ſoon found, that a Government thus uſurped, and ſo confuſed, was feeble and incompetent to the preſervation of the peace. Anarchy, with all the diſorders and crimes incident to it, enſued. Beſides, the General Court itſelf were conſcious of the illegality of their powers, and feared that puniſhment which their uſurpation and rebellion deſerved. In this wretched ſtate of their affairs, they received orders from William to continue the Government in his name, "until he ſhould give ſuch directions for the "Government, as ſhould conduce to *his* ſervice, and the good of *his* ſubjects, within "that colony."

This lenity in William was as unexpected as it was unmerited; it diſpelled the dark cloud of fear which ſo lately hung over their minds. And, in proportion as their fear of puniſhment vaniſhed, a hope aroſe, that they ſhould ſucceed in procuring a confirmation from the Crown of their democratical Government. And, as an introduction to its

favour,

favour, they now, and not before, proclaimed William with that ſplendour which they hoped would convince him of, what was moſt diſtant from their hearts, their ſincerity.

The Prince being firmly ſeated on the Britiſh throne, and the Common-wealth aboliſhed, they perceived, that the tenure of their power depended on the pleaſure of the Crown, and that preſent ſubmiſſion and ſolicitation were the moſt prudent plans of policy. Neither ſubmiſſion nor ſolicitation was wanting. Enthuſiaſm, whether in religion or politics, never wants induſtry. Their agents were inceſſant in their endeavours to procure a reſtoration of their old republican powers. But William was already too well acquainted with their repugnancy to the fundamental laws of the Government, which he had reſtored in England, and with the miſchiefs that had thence ariſen to the State, as well as to the coloniſts themſelves. He ſaw that they were incompetent to the preſervation of the order and peace of the colony, that they excluded, in a manner, the authority of the Crown and Parliament over the people; that they diſſolved all ſubordination and relation between the

the principal and inferior ſociety; between the ſupreme will of the State and its members; and that an inferior ſociety, eſtabliſhed on ſuch principles, would be as uſeleſs to the State, as an amputated limb to the human body, but by no means ſo innocent. For theſe reaſons, that wiſe Prince, we may ſafely conclude, refuſed to reſtore their old Charter.

A new Charter was drawn, in which it appears, that the King wiſhed to reform paſt errors, and to reduce the colony to ſome degree of ſubordination to the State. Some of the regulations ſeemed to lead to that meaſure, and perhaps, with a people whoſe minds had not been long before poiſoned with republican principles, they would have had ſome effect. But the force of the remedy applied, was greatly inadequate to the power of the diſeaſe. To eradicate principles ſo deeply rooted in enthuſiaſm, and confirmed by education, it was neceſſary to make the reformation full and perfect. And this could only be done by eſtabliſhing the ſame political orders, officers, and members, and upon the ſame principles, and by governing the people by the ſame general laws, which were eſtabliſhed in the principal ſociety.

ſociety. This, and this only, would, in time, have imperceptibly alienated the minds of the people from their democratical polity, and reconciled them to a mixed form of Government. But the regulations of the Charter fell far ſhort of this remedy. The fundamental laws of the State were not adhered to, but violated. The rights of the Crown, the neceſſary check to popular ambition and licentiouſneſs, and the balance of power between the monarchical and democratical order, were all ſwallowed up in the heterogeneous and repugnant principles of this inferior democratical ſyſtem.

To ſupport theſe truths, we muſt have recourſe to the Charter. Here we find the form of the old Government was not altered. It conſiſts, as before, of a Governor, Deputy Governor, Counſellors, or Aſſiſtants, and an Aſſembly. Theſe politic members form three orders or branches. Thus far they reſemble the Conſtitution of the Britiſh State. But the reſemblance goes no farther. The principles upon which they are eſtabliſhed, are as different, in polity,

from

from thoſe of the State, as the principles of democracy are from thoſe of monarchy.

The Governor and Deputy Governor are indeed appointed by the Crown. From whence, one would imagine, without attending to other circumſtances, that they were dependent on, and a juſt and proper repreſentation of it. But the fact is far different. Their weight and influence in Government, are little more than a ſhadow. The excellence of the Engliſh Conſtitution conſiſts, as I have ſhewn, in having three orders, all independent of each other, in their rights, and in their eſtates; both being neceſſary to a free and unbiaſſed exerciſe of their judgments. And, therefore, the King holds the civil liſt, as the ſupport of his family and dignity, for life. The Lords have their eſtates, and the Commons theirs, independent of each other. Let us ſuppoſe, that the King, or Lords, were dependent on an annual vote of the Commons for the ſupport of their dignities and families, what would become of their independence, and how ſoon would the ſtructure of the mixed monarchy be diſſolved? But the intent

of the conſtitution goes farther; for, it is not only neceſſary to the maintenance of that check, on the natural licentiouſneſs of the people, which is veſted in the King, that he, but that all his officers, ſhould be independent of the popular order of the State. And, therefore, in Britain, their ſupport is included in the civil liſt, or in the perquiſites of office, eſtabliſhed by permanent laws. But the Governor, and Deputy Governor, the Repreſentatives of the King, in this inferior ſociety, have no ſettled ſalaries. They are dependent on the General Aſſembly for ſuch as it ſhall, from time to time, be *graciouſly pleaſed to grant*. And, if they are dependent on the Crown for their appointments, they are dependent on the Aſſembly for their *daily bread*. This bread is ever given in proportion as theſe officers gratify the donors in their licentious deſigns, *or not at all*. Hence, it often happens, that the duty and intereſt of a Governor are in oppoſition to each other. The firſt leads him to obey one maſter, while the ſecond compels him to ſacrifice his judgment to another. If he oppoſes the meaſures of the Aſſembly, he ſtarves; and if he confirms them, there is only a

chance

chance of his loſing his office. For experience has taught him rather to rely on royal favour, than on the mercy of an obſtinate, diſguſted, popular Aſſembly, which never ceaſes to purſue its deſigns while there is any hope of ſucceſs.

The Counſellors, or Aſſiſtants, which form the ſecond branch, and which ought, in an inferior degree, to repreſent the ſecond order of the State, inſtead of receiving their appointments from the Crown, or its Repreſentative, are annually appointed or removed by the General Court. This Court conſiſts of the Governor, Council, and Aſſembly; the Council of twenty-eight members, and the Aſſembly of one hundred and eighty. For the election of the members of Council, they meet in one houſe, and the election is made by a majority of votes. The power of electing whom they pleaſe, is, therefore, always in the Aſſembly, who having near ſeven votes to one of the Council, can always overrule their judgments at pleaſure. The Governor has the inſignificant right to put his negative on any perſon elected a member of the Council. I call this negative inſignificant,

becauſe theſe popular orders having the election in their own hands, will ever elect and return to the Governor, for his aſſent or negative, ſuch men as they conceive will ſupport their own popular meaſures. And ſhould an improper perſon be rejected by the Governor, another, a third, or a fourth, equally, or more improper, would be elected and returned, until the Governor ſhould confirm the election. So that the Council, inſtead of being an independent order, is entirely dependent on the democratical and loweſt branch of the Government, and, conſequently, morally incapable, and unfit to anſwer the end intended by the inſtitution of the middle order. For, inſtead of forming an independent check and balance againſt the illegal attempts of the other two, it is naturally led to throw its whole weight into that ſcale from whence *it receives its exiſtence*, and which may *take it away at its pleaſure*. It is ſo far from being an indifferent independent power, that it is a weight improperly added to the democratical branch, which muſt ever render it too powerful for the monarchical, and above *all check or controul*.

The

The Aſſembly, or third order, is elected by the different towns and diſtricts, and in this reſpect, is ſubſtantially a repreſentation of the Houſe of Commons. It claims, and exerciſes all the independent powers, rights, and privileges, of that order. But its rights and powers, under the Charter, do not ſtop here. Beſides the right of appointing the middle order of the Government, it participates in many of the executive rights and powers of the Crown, inſomuch that the exerciſe of them muſt originate with the Aſſembly, and cannot be carried into effect without their conſent.

Such is the conſtitution of the legiſlative authority of this Government. What are the powers conferred by the Charter on its ſeveral orders? In their legiſlative capacities, they ſit and act as three diſtinct branches. The Council, or Aſſembly, prepare bills, and having agreed, they ſend them to the Governor for his concurrence or diſſent. The Council being in a manner appointed, and liable to be removed by the Aſſembly, once in every year, it is reaſonable and natural to conceive, that an harmony in judgment will generally ſubſiſt be-

tween them; and that on any favourite bill their united force will be ever exerted againſt that of the Governor's. And the Governor being dependent on them for his ſalary and ſubſiſtence, it is as natural and reaſonable for thoſe who conſider the frailties of human nature, to believe, that the firmneſs and virtue of a Governor thus circumſtanced, are ſcarcely to be depended on. What then can be the weight or importance of the Governor's right of diſſent to the laws propoſed by the other branches of the Legiſlature? The true anſwer is nothing, or at leaſt next to nothing. The influence and weight of the orders which ought to repreſent the monarchical and ariſtocratical branches of the State, are chained, like Prometheus, to a rock, never to be effectually unlooſed while the Charter exiſts.

To the Governor, and this General Court, or Aſſembly, the ſupreme direction of the Government was granted in the following indefinite terms: "And we do, for us, our "heirs and ſucceſſors, give and grant to the "ſaid Governor, and the Great and General "Court or Aſſembly, *full power and autho-*

"*rity,*

" *rity*, from time to time, to make, ordain,
" and eſtabliſh, *all manner* of wholeſome
" and reaſonable *orders*, *laws*, *ſtatutes*, *or-*
" *dinances*, *directions*, *and inſtructions*, either
" with penalties or without (ſo as the ſame be
" not repugnant, or contrary to the laws of
" this our realm of England) as they ſhall
" judge to be for the *good and welfare* of
" our ſaid province and territory, and order-
" ing thereof, and of the people inhabiting,
" or that ſhall inhabit the ſame, and for the
" *neceſſary ſupport and defence* of the Govern-
" ment. And to name and ſettle, *annually*,
" all civil officers within the ſaid province
" (ſuch officers excepted, the elections or
" conſtitution of whom we have, by theſe
" preſents, reſerved to us, our heirs and ſuc-
" ceſſors, and to the Governor of the pro-
" vince), to *ſet forth their ſeveral duties*,
" *powers*, *and limits*, and the *forms of ſuch*
" *oaths*, not repugnant to the laws of Eng-
" land, for the execution of their ſeveral
" offices; to levy proportionable and reaſon-
" able rates and taxes, on the perſons and
" eſtates of the inhabitants, for *the neceſſary*
" *defence and ſupport* of the Government.
" And to diſpoſe of all *matters and things*,

" whereby our ſubjects, the inhabitants of the " ſaid province, may be *religiouſly, peace-* " *ably, and civilly governed, protected, and* " *defended.*"

The modifications and extent of theſe powers require no comment. The reader will, on the firſt peruſal, perceive, that they are as evidently repugnant to the principles and fundamental laws of the State, as language can make them: That their ſtructure is, in effect, that of a perfect democracy, while the conſtitution of the State is a mixed monarchy: And that there is no matter ſuſceptible of human direction, and neceſſary to the ſafety of an independent ſociety, or to ſovereignty itſelf, to which this inferior member is not made competent. In what then can conſiſt its ſubordination to the State, or its political connection with it?

The conſtitution of the executive powers was not leſs impolitic and inconſiſtent with the fundamental laws of the State, than the legiſlative. The Governor poſſeſſes a power to call, prorogue, and diſſolve the General Court, within the year. But this right is rendered of little conſequence by the annual elections,

elections, and the ſuperior influence of the democratical order of the ſociety. For, when he has diſſolved the General Court, that diſſolution has ever recommended the old members to the favour of the people; and there has been ſcarcely an inſtance in which the ſame members have not been re-elected; and when met they have ſeldom failed to reſume the former ſubjects of controverſy. Their ſentiments thus confirmed by the voice of the people, their former purſuits are never given up, however unjuſt, or however inconſiſtent with the rights of the Crown, or the balance which ought to be preſerved between the different orders of the ſociety, or however miſchievous to the intereſts of the ſociety itſelf. And by an obſtinate perſeverance in their ambitious deſigns, the Governor, at length, tired with diſputes, dependent on them for his ſalary, and incapable of maintaining the rights of the Crown, yields them up, with his judgment and duty, to an influence which he has not power to controul.

The Governor has likewiſe authority to "appoint Judges, Commiſſioners of Oyer "and Terminer, Sheriffs, Provoſts, Marſhals, "Juſtices

" Juſtices of the Peace, and other Officers to " the Council and Courts of Juſtice belong- " ing." But even here his judgment is in political bondage. He muſt, firſt, give ſeven days notice to the Council to meet; and obtain their " advice and *conſent*" to every appointment. Thus a legiſlative popular order has a negative on the perſon holding the executive authority, may diſſent from him as often as they pleaſe, and put him under the neceſſity of nominating others, until he ſhall fix upon thoſe that are under their influence, or of preſiding over a ſociety without Officers to execute the laws, and to tranſact the buſineſs of Government. The right to conſtitute all other civil Officers, and to remove them from their offices, is veſted in the Council and Aſſembly, independent of the Governor. So that the Governor, who ought to poſſeſs the ſole and excluſive right to the executive powers, has not a right to appoint one civil Officer.

In this ſtrange and abſurd manner, are the three principal orders of the Maſſachuſets Government jumbled together, into one political chaos, in direct contradiction to the fundamental

damental laws and polity of the State. Thoſe checks, and that balance, which ought to extend through every political member, and which conſtitute and ſecure the liberty and ſafety of the principal ſyſtem, are effectually deſtroyed. Inſtead of a perfect repreſentation of the monarchical and democratical powers placed in oppoſite ſcales, nearly balanced, with an indifferent and independent ariſtocratical order, ever ready to controul the illegal attempts of the other two, the monarchical exiſts only in name. The ariſtocratical influence is thrown into the democratical, and the democratical, which, from the nature of man, ſtands moſt in need of controul, is *the ſource of all power, and above all controul.*

Candour requires, that I ſhould now take notice of thoſe articles which ſeem to create any degree of ſubordination in this inferior ſociety. There is, in this, as in ſome of the other Charters, a reſervation of a right to appeal from the judgment, or ſentence, of any Judicatory or Court within the province, to the King and his Privy Council. But this appeal is confined to perſonal actions. The

ſubject

ſubject has no remedy againſt an erroneous and unjuſt determination in actions real or mixed, ſhould any perſon be found ſo hardy as to appeal from a deciſion given by the General Court, where all cauſes are ultimately adjudged.

There is alſo a nugatory injunction, without a penalty, to tranſmit the laws for the "Royal approbation or diſallowance," to which the remarks I have made on the like injunction in the other Charters will juſtly apply. I need not, therefore, repeat them here. The Governor holds the right of appointing the military Officers, and of commanding the military force of the province. But this, of all the numerous rights and prerogatives of the Crown, is the only one delegated by the Charter to him. The others, we have ſeen, are veſted either in him jointly with the Council, or in the Council and Aſſembly, ſubject only to his negative. A prerogative thus unſupported, and liable to be controuled by the weight and influence of the Council and Aſſembly, muſt be truly unimportant in the ſociety; it can never ſupport the civil Magiſtrate in his endea-

vours

vours to preſerve the internal peace, or to repel the force of an external enemy, or to maintain the rights of the principal ſociety.

It is alſo a proviſion in the Charter, that the laws made for the regulation of the colony, are not to be "repugnant, or con-"trary" to the laws of England. The intent of this proviſion, when we conſider the unlimited powers granted, ſeems difficult to underſtand. Had the fundamental laws of the State been purſued in the ſtructure of the inferior ſociety; had the legiſlative powers been confined to ſuch local laws and regulations, as might be neceſſary to promote the deſign of the patent, leaving the people to be governed by the general laws of the ſupreme authority; this proviſion would have been intelligible, becauſe it would have conſiſted with the fundamental laws of the State, and with thoſe principles upon which all inferior ſocieties have ever been, and ought ever to be, conſtituted. The Charter would then have ſpoken this plain and ſenſible language, "The peo-"ple of the colony are to be governed by the "general laws of the ſupreme legiſlative au-"thority. But they ſhall, notwithſtanding,

"poſſeſs

" poſſeſs a right to make all ſuch laws as may " be neceſſary to promote the ſettlement, " cultivation, and improvement of the " colony, to which they are, from their local " and more circumſtantial knowledge, rea- " ſonably preſumed to be more competent, " provided that even thoſe laws ſhall not be " repugnant to the general laws of Eng- " land." Here would have been conſiſtency. The proviſion would have agreed with the general regulations. But, inaſmuch as the legiſlative powers granted by the Charter were unlimited, and might be extended even to a rejection or repeal of the general laws of the State, and to the making any others in their ſtead, and as the Charter ſtrictly confines the allegiance of the people to the colonial laws, this proviſion is evidently abſurd and nugatory. It is abſurd, becauſe it creates no ſubordination; and it is nugatory, becauſe it is ſuperſeded, or rendered ineffectual, by the unlimited powers of the Charter. And it is nugatory for a yet better reaſon, becauſe no King of this realm ever poſſeſſed a power to enable the people to make laws " repugnant" to the general laws of the State, nor even to ſuſpend the force of, or to exempt Britiſh *ſubjects* in-

habiting *Britiſh territory*, either within or annexed to the realm, from the obedience due to the laws of the *Britiſh legiſlature*. It is impoſſible to conceive a power more dangerous to the conſtitution, or more inconſiſtent with the nature of civil ſociety, be its form what it may. For if the King may diſcharge his ſubjects from their allegiance to the legiſlative power, of which he is only the ſupreme truſtee, he may apply that allegiance to what mode of Government he pleaſes. He may, as James I. did in the Virginia Charters, aſſume the complete powers of a deſpotic legiſlator, and direct the allegiance of the people to himſelf: Or, as Charles I. and II. did, he may grant them to others, in perpetual inheritance, and thus ſubvert that conſtitution of Government which he is entruſted to preſerve.

But whatever may have been the intent of this proviſion, it is certain, that neither in the Proprietary nor Charter colonies, has it been interpreted, either by the Proprietaries or the people, in a ſenſe conſiſtent with their ſubordination. Both of them have conſidered the word " repugnant," as ſo general and indefinite,

finite, that they could apply it, at all times, to their own ſiniſter views and purpoſes. They have ſaid, that laws may be widely *variant* from, and yet not "*repugnant*," *or contrary* "to the laws of England;" that "no laws can be repugnant," which are not palpably *contradictory* and *oppoſite:* and have acted accordingly.

One example among many will illuſtrate their language and conduct. The common law declares, that, upon the demiſe of a parent, his lands, held in common ſocage, ſhall deſcend to his eldeſt ſon. Now, to make a law "repugnant" to the common law in this reſpect, it muſt be, that the youngeſt ſon, to the diſheriſon of the eldeſt, ſhall take the patrimony. But that a law which gives to the eldeſt ſon a part ever ſo ſmall, is only *variant* from, but not "*repugnant* to," the common law. In this manner, the Coloniſts have reaſoned, and in conformity to their republican principles, which are to deſtroy all diſtinctions of rank, and reduce every man in the ſociety, as nearly as poſſible, to a level, in regard to honours and eſtate, they have paſſed acts for making partition of lands

among all the children, allowing the eldeſt ſon only a double portion. And this, they contend, is no deviation from the ſenſe of the proviſion.

Nor have they heſitated to go further. The general laws of England, made for the ſecurity of the perſons and properties of the ſubject, have met with the ſame fate. They have altered almoſt all the laws relating to felonies, larcenies, and other offences againſt the peace of ſociety. They have inflicted penalties, in ſome inſtances, much more ſevere; in others, more mild; and, in general, widely variant from thoſe impoſed by the laws of England. In Pennſylvania, no ſtatute, relative to the peace and order of the colony, is adjudged to be in force, unleſs ſpecially extended by an act of the Proprietary Aſſembly. In the Maſſachuſets Government, they have declared, that no law of the Britiſh Legiſlature ſhall be of force, unleſs re-enacted, or extended, by their own legiſlature: And in all Charter Colonies, they have conducted themſelves agreeably to this principle. Thus is the polity of all States, whether civilized or Barbarian, reverſed. The inferiour and ſubordinate power

gives validity to the acts of the ſuperiour—of the ſupreme authority, or rejects them at pleaſure! Politicians may look, if they pleaſe, for order, conſiſtency and ſubordination in the inferior ſocieties, where theſe powers prevail; I ſhall leave them to be convinced by the event. That muſt ſet them right. I wiſh it may not be when the miſchiefs ariſing to Britain from ſuch powers are beyond all remedy.

To theſe unlimited, and, by their ſeveral conſtitutions, ſupreme Legiſlatures, and to theſe laws, thus variant from the laws of England, the Coloniſts, by the Charters, are ſtrictly enjoined, under the penalties contained in the laws, to give their allegiance; and, in conſequence of this injunction, they are ſworn to do ſo. If this is not a direct diſcharge of Britiſh ſubjects from their allegiance to the Britiſh Government, it certainly amounts to one; and could we ſuppoſe, that the Charters were founded in legal and conſtitutional authority, it might be pleaded in effectual bar. For the doctrinal truth, that "A man cannot ſerve two maſters," if we had not received it from the higheſt authority, is too evident to common ſenſe and experience

ence to be denied. A man cannot aſſent to two repugnant propoſitions. How then can the ſame men be the ſubjects of the Proprietary and Charter Governments, veſted with the unlimited powers before deſcribed, and having laws ſo diſſonant to the laws of England, and yet remain ſubjects of the Government of Great Britain? It is in the nature and reaſon of things impoſſible.

Of this impoſſibility the diſaffected republicans in America, before their declaration of independence, availed themſelves in argument againſt the authority of Parliament. They have contended, that ſeeing it impoſſible to obey two different complete legiſlative powers, and that they are ſworn to obey that of the Colony, they can owe no allegiance to the Britiſh Parliament; and, therefore, that the King, in America, is not a repreſentative of the Britiſh State, but only the diſtinct repreſentative of the ſeveral colonial legiſlatures; that though the King was their King, yet the Parliament was not their Parliament, becauſe they were bound to obey laws different from the laws of Parliament; that when they

ſwear allegiance to the King, it is to him as ſupreme repreſentative of the Colonial Legiſlatures, and not as repreſentative of the Britiſh Parliament; and that there is "no abſurdity in ſuppoſing, that an oath of allegiance, "taken by the Coloniſts, to be taken to him, "to the King as repreſentative of the *ſupreme legiſlative power of the Colony.*"

This doctrine, there is much reaſon to believe, would have been palatable to James I. The complexion of the Charters, granted in his time, countenances the conjecture. Nor did the public conduct of Charles I. or II. reject the idea. All of them endeavoured to increaſe their own power at the expence of that of the legiſlature. But the whole tenor of his preſent Majeſty's conduct muſt convince the world, that he has acted on very different principles. He has rejected and reprobated the offers of the ſovereignty of America, independent of his Parliament. Faithful to his royal truſts, and determined to preſerve the liberties of his ſubjects, he has conſtantly declared their offers to be treaſon againſt the State. In his ſpeeches from the throne, he has pronounced the authors of them

them rebels, and called on his Parliament for aſſiſtance to enable him to defend their own rights, and the rights of his people, from ſo daring an uſurpation.

To trace, in detail, the turbulent and ſeditious conduct of the people under this Charter, would be more tedious than entertaining. It would protract this chapter to an inordinate length. Beſides, this taſk is already performed by that faithful Hiſtorian, their late Governor, Hutchinſon. To this Hiſtory I will preſume to refer the more inquiſitive reader, contenting myſelf with only obſerving, that the new Charter did not, in any reſpect, change the meaſures or opinions of theſe deluded people. The ſame reſtleſs and republican ſpirit—the ſame enmity to the conſtitutional authority of the State—the ſame thirſt for independence in Government—the ſame attempt to wreſt from their Governors the few rights and prerogatives which were reſerved in the Crown, and the ſame public commotions and convulſions, continued down to their declaration of independence. Nor could any man of reflection expect it could happen otherwiſe. The Charter was not cal-

culated to produce a change in the manners, opinions, and deſigns of men, which had been ſo long confirmed by education. Nothing ſhort of a Charter founded in the principles of the Britiſh Government, and a ſtrict adherence to thoſe principles, could have produced that effect.

Had William conſtituted, by this Charter, an inferior body politic, conſiſting of a perfect repreſentation of the Crown, veſted, in a ſubordinate degree, with its legiſlative and executive rights, and always accountable to it, a middle independent order, repreſenting the Houſe of Lords, and a repreſentation of the people; and had he enjoined a ſtrict obedience to the general ſtatute and common laws of the realm, reaſon, and all experience, muſt convince us, that thoſe republican ideas which had been foſtered under their old Charter, muſt have been gradually, and long before this time, eradicated, and an attachment to the principles of a mixed monarchy formed in their ſtead. Their deſire of independence would have been loſt in a ſenſe of the benefits which they would have received, from their ſubordination and ſubjection to the moſt ra-

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tional ſyſtem of protection and government in the world. But the Maſſachuſets Charter was formed on principles ſo repugnant to thoſe of the State, that they could not fail to create in the people an enmity to it, had their minds been ever ſo unprejudiced. It was perfectly adapted to nouriſh and ſupport that ſpirit of independence, which the firſt ſettlers carried over with them, and which became daily more confirmed under their firſt democratical Charter.

Numerous are the facts which prove, that this inferior ſociety has never failed to take every advantage of the confuſion and diſtreſs of the Britiſh Government, to throw off their dependence. In the time of the civil wars, which produced the uſurpation, they ſecretly enjoined their agents to aſſiſt in fomenting and increaſing the ſedition. When the uſurpation was effected, they, with infinite addreſs and diſſimulation, courted and flattered the commonwealth, but refuſed to carry on the buſineſs of their Government in its name, or under its authority, and acted, during its continuance, as an independent ſovereignty. When Charles was reſtored, they declined for

more than a year to proclaim him, and then did it with the utmoſt reluctance. At the time of the Revolution, they ſeized the Governor appointed by James, and uſurped the Government; but not with deſign to deliver it up to William, nor to become ſubordinate to the conſtitution which he had reſtored, and therefore they proclaimed him with as much reluctance and chagrin, as they had done Charles the Second.

The queſtion here occurs, what could have induced them ſo frequently to return to their nominal ſubordination to the Britiſh Government? The true anſwer is, Neceſſity. Their enthuſiaſm and rage for independence, often led them to attempt it when their own weakneſs forbad it. Whenever the Britiſh nation was diſtracted by internal diſcord, or diſtreſſed by foreign wars, they thought it the period which Heaven had deſtined for their deliverance; and therefore they always embraced ſuch opportunities to ſet up the ſtandard of independence, hoping that thoſe diſcords and wars would end in the deſtruction of the Britiſh monarchy; not conſidering their own weakneſs, and the ſuperior power of the Parent State,

when its peace ſhould be reſtored. Their hopes led them into rebellion, their diſappointments into the moſt abject ſubmiſſion.

At the concluſion of the laſt war, much experience had proved, that they had but two difficulties to ſurmount; the power of the Britiſh State, and that of the Canadians and Indians. They thought this the proper time to get rid of one of them. Fortunately for their deſign, it happened that Doctor Franklin, a Boſtonian by birth, a republican in principle, and a perſon of great intrigue and abilities, was then a colony agent in London. This gentleman was employed to prevail on the Councils of Britain, to give up, in the treaty of peace, ſome of the Weſt Indian conqueſt for the ceſſion of Canada. For this purpoſe, he publiſhed a pamphlet, intitled, "The Intereſt of Great Britain conſidered, "&c." The intrigues of this Colony prevailed, Canada was ceded to Britain, and the ſeditious ſucceeded in delivering themſelves from one great check to their independence.

Upon

Upon this event, the enthuſiaſm of theſe people immediately pronounced in their public papers, that " the corner-ſtone of a great " American empire was now laid." Freed from their inceſſant wars with the natives and Canadians, bordering on their territories, they had leiſure to brood over, and to carry into execution, thoſe other meaſures which led to the accompliſhment of their long meditated and ſo often diſappointed independence. They well knew, that the Middle and Southern Colonies had not yet entertained the thought. They alſo ſaw, that it would be neceſſary to procure the aſſiſtance of theſe Colonies. To obtain that aſſiſtance from the people of the Church of England, Methodiſts, Quakers, Lutherans, Swingfielders, Dumplers, Anabaptiſts, Moravians, they knew was impoſſible. The people were, in general, too firmly attached to the principles of the Britiſh Government, to enter into rebellion againſt it.

But there were ſectaries whoſe principles in religion and government were analogous to their own in all the Middle and Southern Colonies; I mean the Iriſh Preſbyterians. To them they ſecretly communicated their

deſign,

deſign, and made their application for aid. But the ſeveral churches of theſe ſectaries, agreeably to the principles of their church government, were diſunited. No one had a connection with another. It was therefore neceſſary, that their union ſhould be effected, in order to enable them to join in a body with the eaſtern ſedition. This meaſure was warmly recommended by agents from Maſſachuſets. A Synod was formed at Philadelphia, repreſenting, and uniting, all the Preſbyterian congregations from Georgia to Nova Scotia. For this meaſure, religion was made the oſtenſible pretext, though the independence of America was the ſecret and real motive.

Between this Synod and the Grand Committee, repreſenting all the congregational and independent churches of New England, ſitting annually at Boſton, an union was formed, not for aſſimilating their religious tenets, for that was impoſſible, and therefore never attempted, but to carry their great plan of independence into execution. In ſhort, this was a political, and not a religious union. This truth appears evident from a circular letter,

ter, and the articles of union*. In which their declared purpoſe is, to " unite themſelves more cloſely together, ſo that *when there may be a neceſſity to act as a body*, we may be enabled to do it whenever they may be called together, *to defend their civil as well as religious privileges.*" This union was formed immediately after the ceſſion of Canada.

Thus united, theſe two lawleſs combinations devoted, annually, a part of their time, to watch over not only the civil authority of their reſpective provinces, but that of Great Britain. When the regulations in the Stamp Act came to be executed, the right of Parliament to paſs it became a ſubject of their diſcuſſion. They were not a long time in determining, that the Parliament had no authority to paſs it, and therefore, that it was a violation of their civil liberty. And, as the influence of the New England Committee, and the Pennſylvania Synod, over their people,

* See this letter and articles in a pamphlet, intitled, "Hiſtorical and Political Reflections on the Riſe and Progreſs of the American Rebellion." Publiſhed by Wilkie, St. Paul's Church Yard.

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is little ſhort of that of the Pope, they unanimouſly joined in oppoſing that act. Their influence had alſo its effect on ſome perſons of other religious denominations, who were deluded with the ſpecious name of liberty. But unanimity in the oppoſition was the peculiar characteriſtic of thoſe people, while a great majority of the members of the Church of England, and many of the Lutherans, Calviniſts, and Baptiſts, were averſe to it, and the Methodiſts, Quakers, Moravians, Swingfielders, Menoniſts, and Dumplers, generally avoided all connection with the ſedition.

The ſucceſs in frightening the ſupreme powers of the firſt State in Europe into a repeal of the act, was a victory not to be forgot. It convinced them, that induſtry and perſeverance in their treaſon, would enſure their wiſhed-for independence. Nor was their induſtry or perſeverance wanting. Between the repeal of the Stamp Act and the ſubſequent regulations of Parliament, the Boſtonian agents were conſtantly employed throughout America, in deluding the people to take part in their future ſedition. When the Tea Act paſſed, they were prepared to meet it. An

union

union of the Congregational, Independent, and Preſbyterian intereſts, was now perfectly eſtabliſhed. The plans of their future operations were laid. They had made many proſelytes to their ſedition among people who differed from them in religious ſentiments, under the ſpecious pretence of defending their liberty. But what they moſt relied on was, an alliance which they had now formed with a faction in Britain, who, loſt to all ſenſe of their country's welfare, entered into an agreement, to clog, and, if poſſible, to chain down the powers of Government, while it received all manner of unjuſt reproaches, inſults, and indignities, from its rebellious ſubjects. *On the fidelity of theſe allies reſted the great hope of rebellion.*

Thus prepared, the faction in Maſſachuſets determined not to be inactive in their ſedition in America, while their faithful friends in Britain were taking every meaſure in their power to encourage its progreſs, and to prevent its being ſuppreſſed. Their letters miſſive, and their induſtrious agents, traverſed all the Britiſh Colonies. The deſign of their religious combinations could no longer be concealed.

The

The word went forth, and almoſt every Congregational and Preſbyterian pulpit throughout North America, reſounded with the abuſe of Majeſty, and treaſon againſt the Britiſh Government. Lawleſs Committees and Conventions immediately ſtarted up, principally compoſed of theſe ſectaries, and the flame of rebellion was ſoon communicated in a greater or leſs degree to all the Colonies; the conſequence of which is too well known to be here recited.

Before I conclude theſe reflections on the Colonial Governments, I ſhould not do juſtice to my ſubject if I did not obſerve, that they do not reſt on mere ſpeculative arguments. They ſtand confirmed not only by the ſtrongeſt reaſons, but very late experience. For they are founded on theſe inconteſtible facts, well known to every perſon who is acquainted with the riſe and progreſs of the American rebellion: That, in the New England Colonies, from their firſt ſettlement, there has been an unremitting oppoſition to the legal exerciſe of the Royal prerogative, and the Parliamentary authority; whilſt that oppoſition has been ſcarcely known in any other: That the Maſſachuſets is the only

only Colony which, before the preſent revolt, ever entered into open rebellion; the Colony which firſt, in its public councils, denied the authority of Parliament; and the Colony which firſt raiſed money, and levied men to oppoſe it: That the preſent revolt was firſt meditated, and with great facility brought to perfection by the factious in the three eaſtern governments, before it was thought of in any of the other provinces: That the principles of the revolt were by the moſt indefatigable induſtry propagated by them through the other Colonies: That the Proprietary Governments next caught the infection, and embraced the treaſon: And that the Royal Governments came into it laſt, and then with great reluctance.

From theſe facts, and the preceeding arguments, ſo fully ſupported by reaſon, we may certainly draw the following unerring inſtruction.

1. That the ſtructure of all inferior politic ſocieties ought to be eſtabliſhed on the ſame principles of polity with thoſe of the State, as it was ſettled at the Revolution, if we mean

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to eſtabliſh and preſerve their ſubordination and obedience to the Britiſh Government.

2. That in proportion as this rule ſhall be obſerved, there will be in the people a greater or leſs attachment, or a greater or leſs propenſity to throw off their ſubordination and allegiance to the State. And

3. That while they remain eſtabliſhed on principles ſo heterogeneous and repugnant to thoſe of the principal ſyſtem, no permanent union nor harmony can exiſt between them and the State. A diſlike to its polity, and a reluctance to be governed by it; added to an anxious and reſtleſs deſire of independent rights and powers, muſt prevail; and rebellion and revolt be the reiterated conſequences, until independence is finally obtained.

If theſe concluſions be juſt, we may certainly, without too much preſumption, draw a fourth, That if the Britiſh Councils mean, hereafter, to conſider the American Colonies as annexed to, and parts of, the realm; and as ſubordinate members of the Britiſh State; if

they wiſh to deſtroy the cauſes of internal diſcord and tumult, and to confer on the people the benefits and bleſſings of upright Government, a reformation in their ſyſtems of polity muſt take place. They muſt be brought nearer to thoſe principles upon which the Government of the principal ſociety has been eſtabliſhed, and which alone can unite and bind them to it. For, otherwiſe, it does not require the ſpirit of prophecy to foretell, that, in much leſs time than half a century, or, indeed, at the firſt favourable opportunity, they will renew their claim to independence, and again take arms, and form foreign alliances to ſupport it. The ſame cauſes muſt ever produce the ſame effects; and when invigorated by additional powers, effects much more miſchievous and dangerous to the ſafety of the empire. The numbers and wealth of the Coloniſts will be encreaſed—their reſources enlarged, and their powers to accompliſh their deſign be beyond prevention. The blood and treaſure we have already ſpent in foſtering, protecting, and bringing them back to their duty, and perhaps much more, will be waſted. The Colonies will be loſt to Britain, and Britain will ſink

into inſignificance among nations, through the neglect or want of firmneſs in the politicians of the preſent day, ſhould they not attempt a meaſure of ſuch infinite importance to both countries, which *is earneſtly deſired by a great majority of the Coloniſts themſelves.*

FINIS.